

AK LEGISLATURE SPECIAL COMMITTEE FILES SCOMM 147 3184



Alaska State House of Representatives
Special Committee on Fisheries

RE: testimony on HB-41

Dear Chairman Seaton,

2/16/07

I would like to have my 12/29/06 letter to Governor Palin entered into the record as testimony opposing the passage of House Bill 41.

Thank you,

Dennis Watson
Mayor
City of Craig

Department of Natural Resources Office of Habitat Management and Permitting

[State of Alaska](#) > [Department of Natural Resources](#) > [Office of Habitat Mgmt & Permitting \(OHMP\)](#)

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The mission of the Office of Habitat Management and Permitting is to protect Alaska's valuable fish and wildlife resources and their habitats as Alaska's population and economy continue to expand.

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Of Interest

- > Publications and Technical Resources
- > Public Review of AWC Changes Updated 8/30/06

OHMP Research Activities

- † Fort Knox Fish Studies
- † Greens Creek Biomonitoring Studies
- † North Slope Mine Site Fish Studies
- † Red Dog Mine Biomonitoring Studies
- † North Slope Whitefish Studies
- † North Slope Vibroseis Studies

FeedBack

Click [here](#) to let us know how this site might better serve your needs.

Activities Requiring Title 41 Permits

- > **Title 41 (Fish Habitat) Permit Information**
- > **Fish Habitat Permit Application Form**
- > Stream diversion
- > Streambank or streambed disturbance
- > Gravel removal
- > Stream crossings
- > Bridge or culvert construction and maintenance
- > Streambank restoration/protection; Erosion control
- > Stream fluming
- > Ice bridge/road construction
- > Water withdrawal
- > Dam and impoundment construction
- > Placer mining activities
- > Recreational suction dredging
- > Use of explosives near stream corridors

General Permits

- > Authorized Vehicle Stream Crossings
- > Authorized Boat Launches
- > Recreational Suction Dredging Permits
- > Miscellaneous



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Department of Natural Resources Office of Habitat Management and Permitting

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The mission of the Office of Habitat Management and Permitting is to protect Alaska's valuable fish and wildlife resources and their habitats as Alaska's population and economy continue to expand.



The Office of Habitat Management and Permitting (OHMP) is an office within the Alaska Department of Natural Resources ([Alaska Executive Order 107](#)) that works to preserve the state's fish and wildlife resources by protecting the areas they need to complete their life cycles.

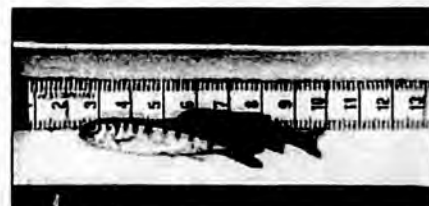
OHMP has the specific statutory responsibility for protecting freshwater anadromous fish habitat ([Anadromous Fish Act, AS 41.14.870](#)) and providing free passage for anadromous and resident fish in freshwater bodies ([Fish Way Act AS 41.14.840](#)).

OHMP fulfills this responsibility by writing Fish Habitat Permits for activities and projects conducted by private individuals or other state or federal government agencies below the ordinary high water of anadromous streams. Habitat biologists in OHMP conduct research and field surveys, review plans with permit applicants to permit a project that does not adversely impact fish habitat, and monitor projects for compliance with permit standards.

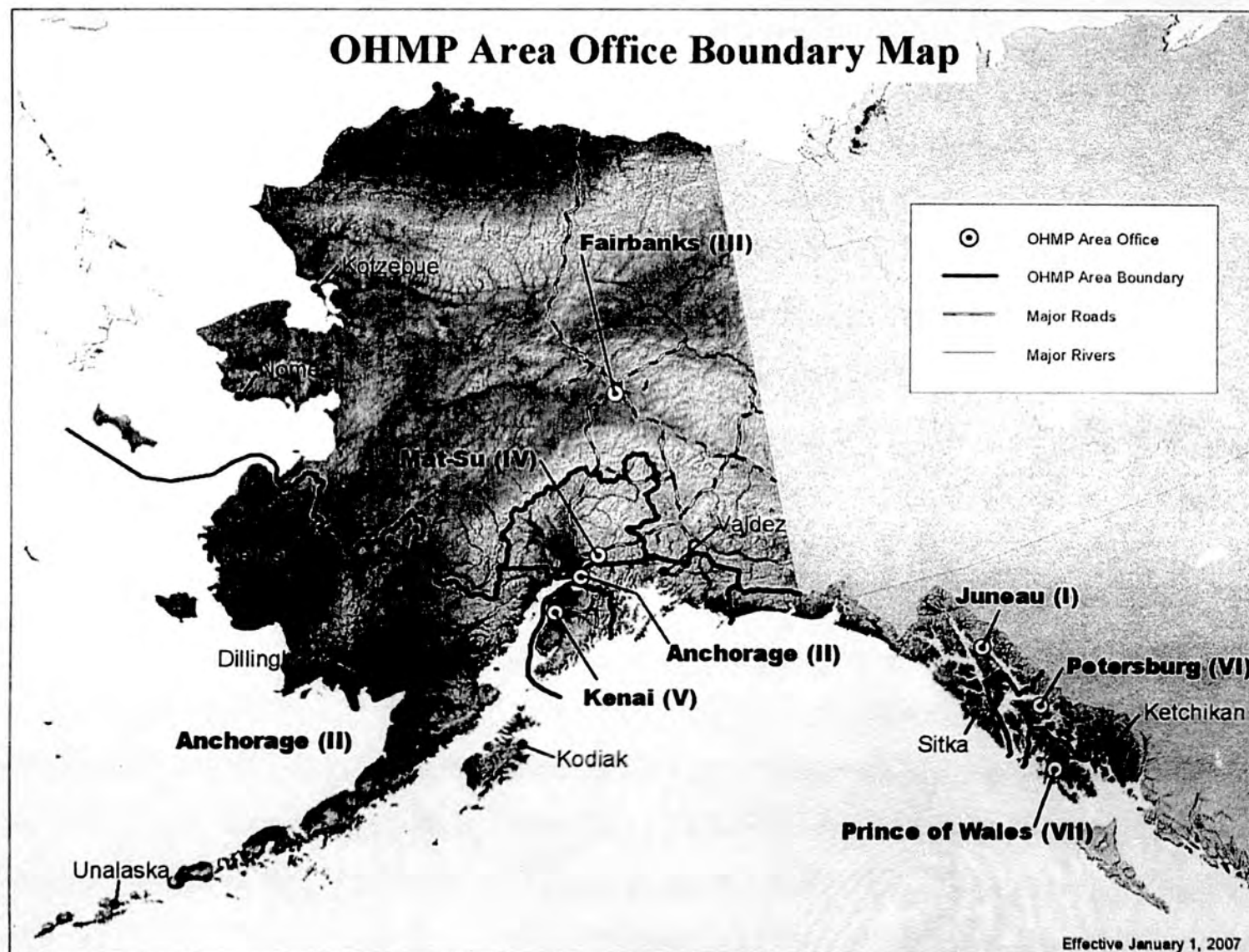


In addition to permitting duties, OHMP coordinates with other agencies during plan reviews to provide expertise for protecting both important fish and wildlife habitat throughout the state. Three examples of these reviews would include working with the state [Division of Forestry](#) to review timber harvest plans; working with the [DNR Office of Project Management and Permitting](#) (OPMP) on large project teams for hard rock mines, oil and gas development and major new transportation projects; and providing comments to OPMP on projects under review for consistency with the [Alaska Coastal Management Program](#).

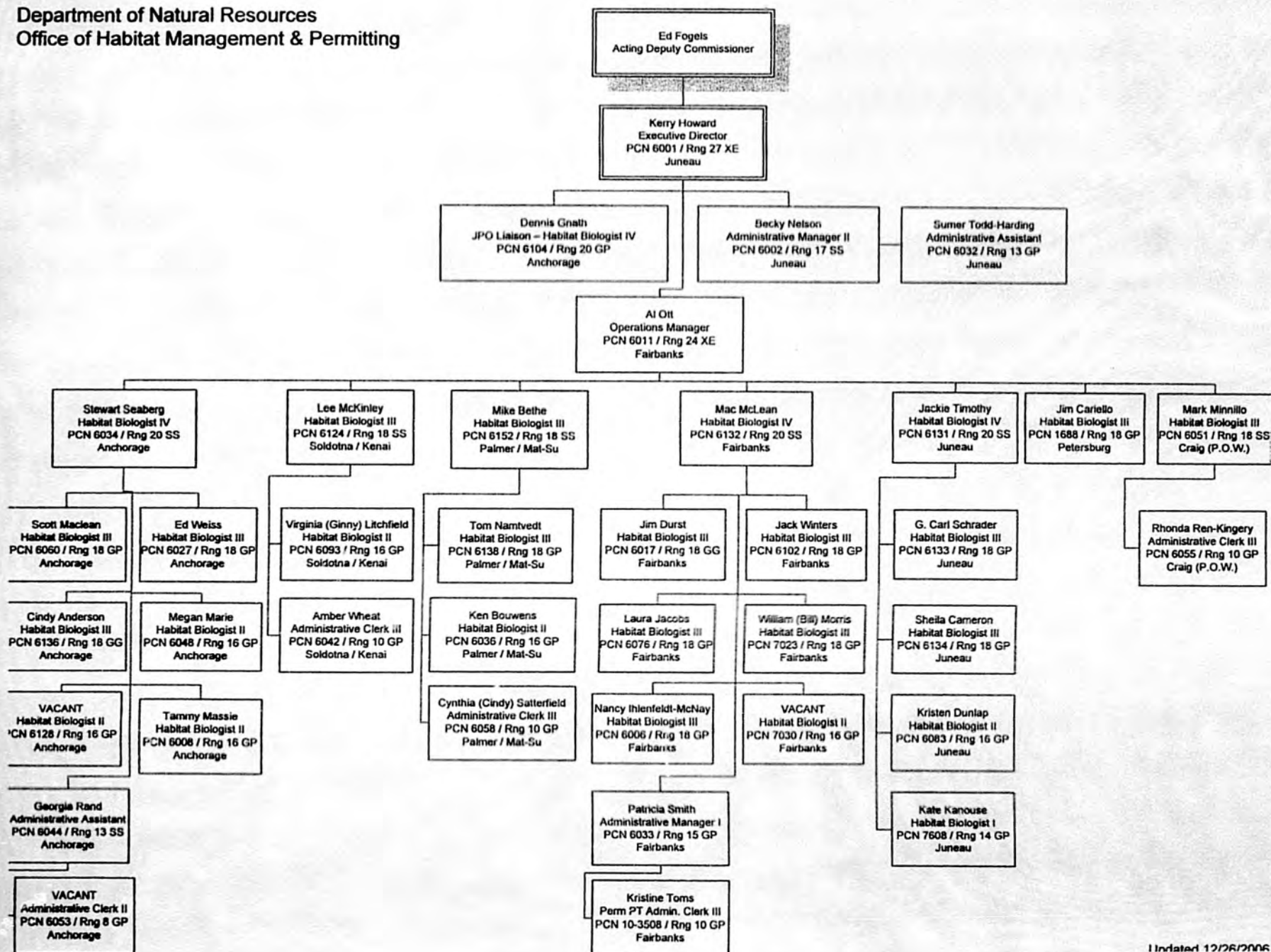
OHMP also works cooperatively with the Alaska Department of Fish and Game to maintain and revise the [Catalog of Waters Important for the Spawning, Rearing, or Migration of Anadromous Fishes](#). This document lists water bodies that are known to be used by anadromous fish and legally gives these streams and lakes protection as important fish habitat.



OHMP Area Office Boundary Map



Department of Natural Resources
Office of Habitat Management & Permitting



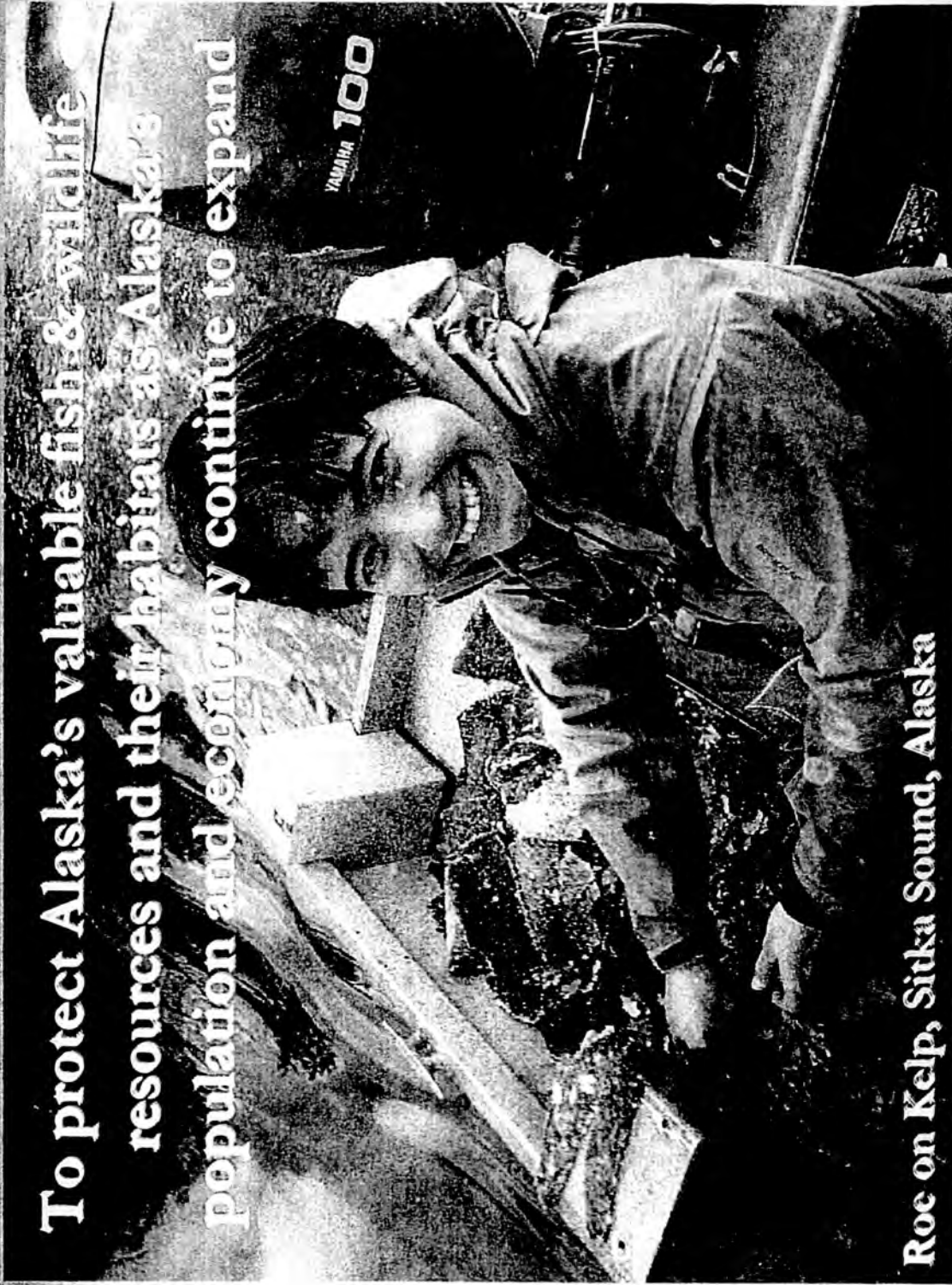
OFFICE OF HABITAT MANAGEMENT & PERMITTING



<http://www.dnr.state.ak.us/habitat/>

Mission Statement

To protect Alaska's valuable fish & wildlife resources and their habitats as Alaska's population and economy continue to expand



Roe on Kelp, Sitka Sound, Alaska

OHMP Statutory Authorities

© AS 41.14.840
Fish Passage

© AS 41.14.870
Fish Habitat



Sockeye Salmon, Steep Creek, Juneau, Alaska

DNR OHIMP & ADF&G

Memorandum of Understanding



Sow & Cubs, Buddy Creek, Northwest Alaska

- ✱ Establishes a relationship that ensures the protection of fish & wildlife resources and fish & wildlife habitats
- ✱ Delineates responsibilities
- ✱ Avoids duplication

OHMP Workload Priorities



- Anadromous Waters Catalog
- Title 41 Fish Habitat Permits
- Alaska Coastal Management Consistency Reviews
 - Emphasis on Title 41 Permits or important habitat issues not addressed by other authorities
- Forest Resources and Practices Act implementation
- Large Projects of importance to the State, and
- Research to aid in permitting decisions

*Catalog of Waters Important for
Spawning, Rearing, or Migration
of Anadromous Fishes*



Caroline Creek, Juneau, Alaska



Catalog & Atlas - Updates

▣ Yearly Updates to 11 AAC 195.010

- ▣ Nominations
- ▣ Additions
- ▣ Deletions
- ▣ Definitions

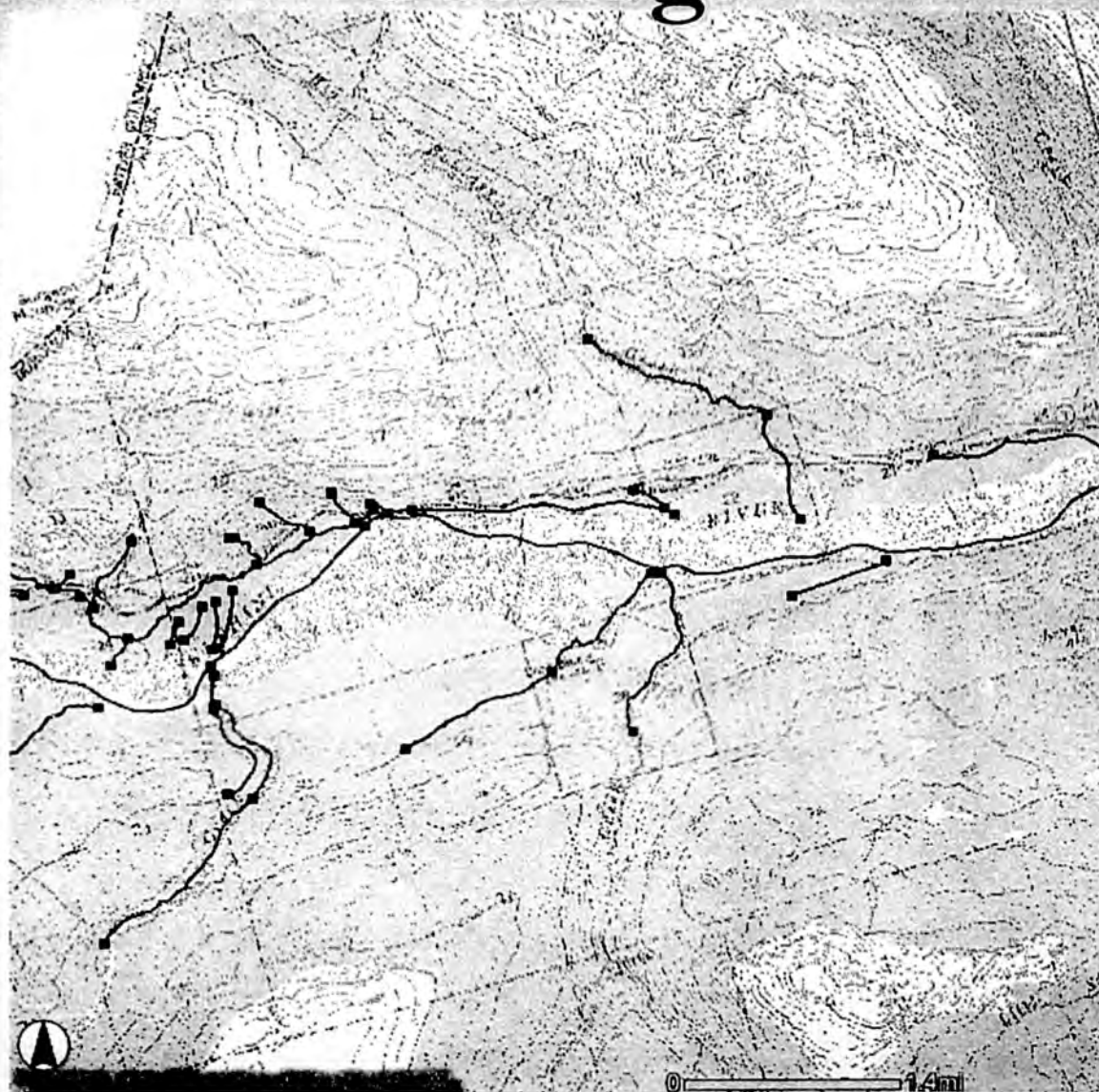
▣ Historical Database

▣ You can help us!



Airport Ditch, Gustavus, Alaska

How do we use the Catalog?



tag grayling red dog mine
freshwater reservoir

tag grayling ft. knox mine

stream surveys red dog mine

stream cross section
measurements greens ck

fish sampling ikalukrok river

fish identification

stream cataloging surveys

juvenile king surveys ruby crk.

invert. sampling buddy cr

electro-fishing training

stream crossing exams

Title 41 Fish Habitat Permits



Multi-use trail bridge, Tidewater Slough, Girdwood , Alaska

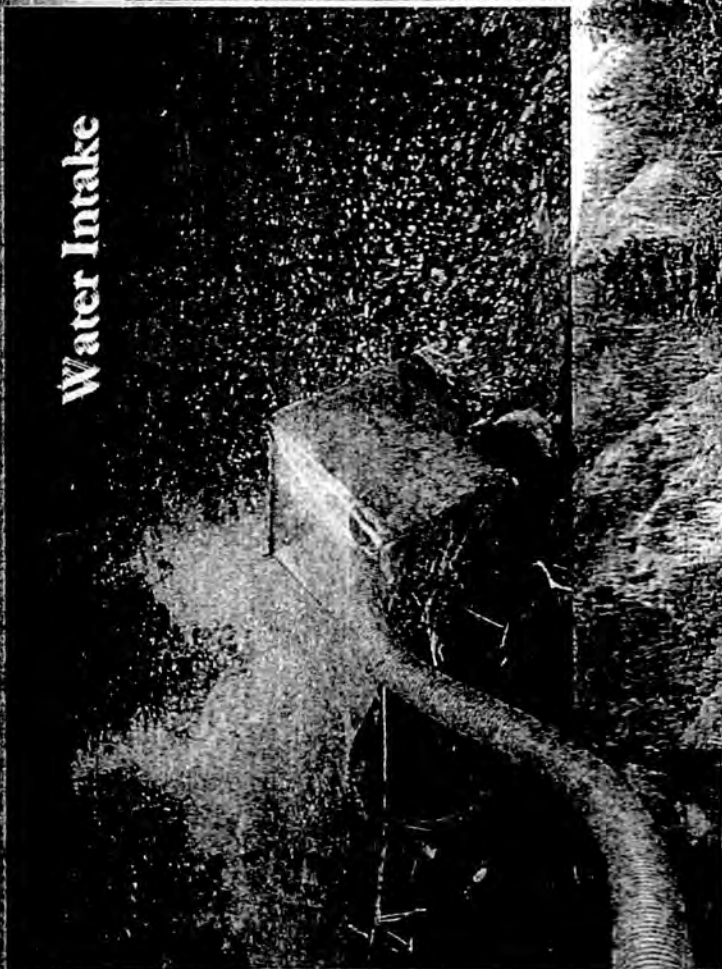
Protect Anadromous Fish Habitat



Unauthorized Activities

Instream Activities

Water Intake



Suction Dredge



Fish Weir



Bank Stabilization

S P R U C E



C O M B O

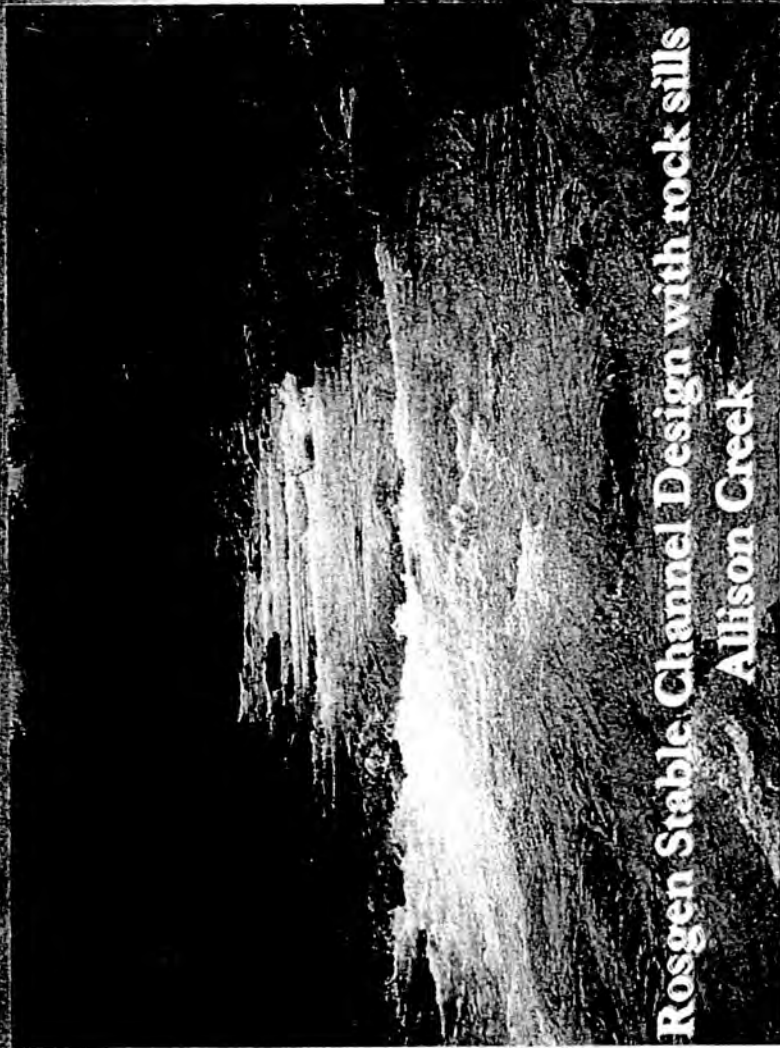


R I P R A P

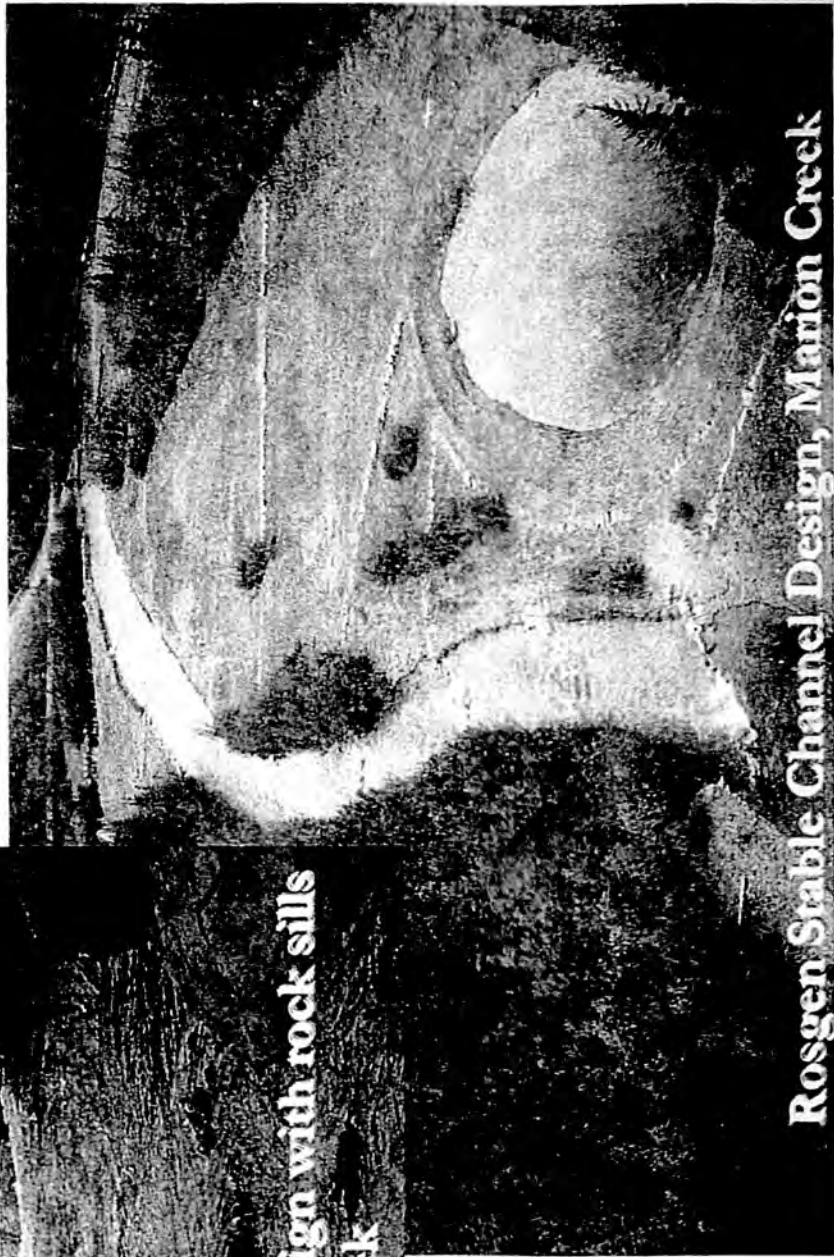


W I L L O W

Stream Reconstruction



Rosgen Stable Channel Design with rock sills
Allison Creek

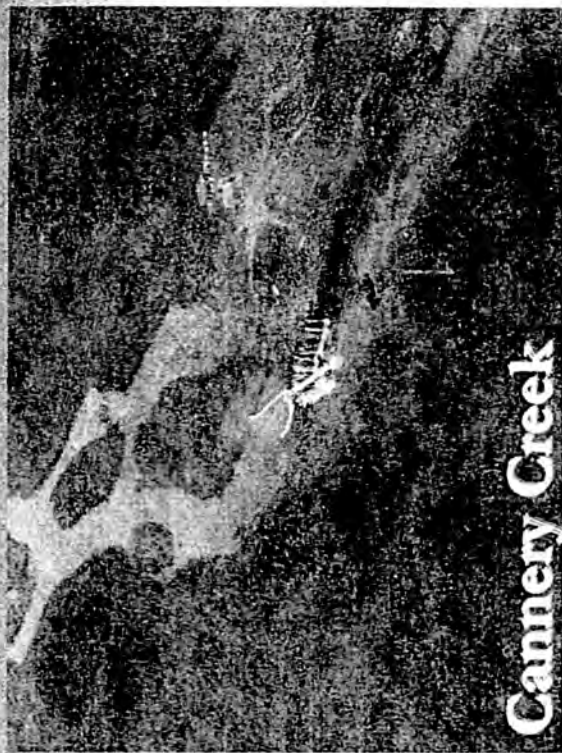


Rosgen Stable Channel Design, Marion Creek

Fish Enhancement



Troika Falls



Cannery Creek



Kizuchia Creek

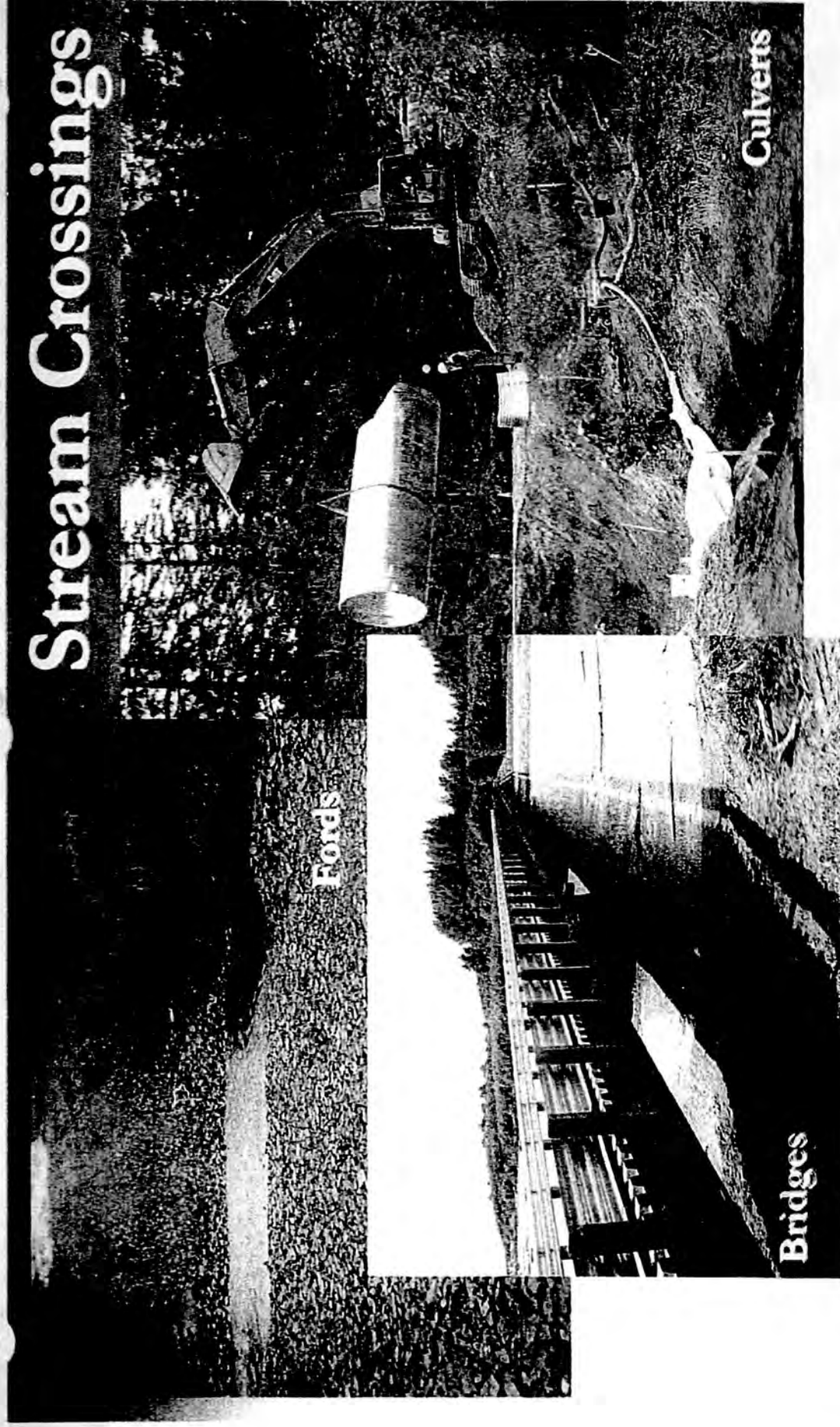


Baranof Island

F I S H L A D D E R S

S T E P P O O L S

Stream Crossings



- Most activities that require a T41 Fish Habitat Permit are generally consistent with the Alaska Coastal Management Program

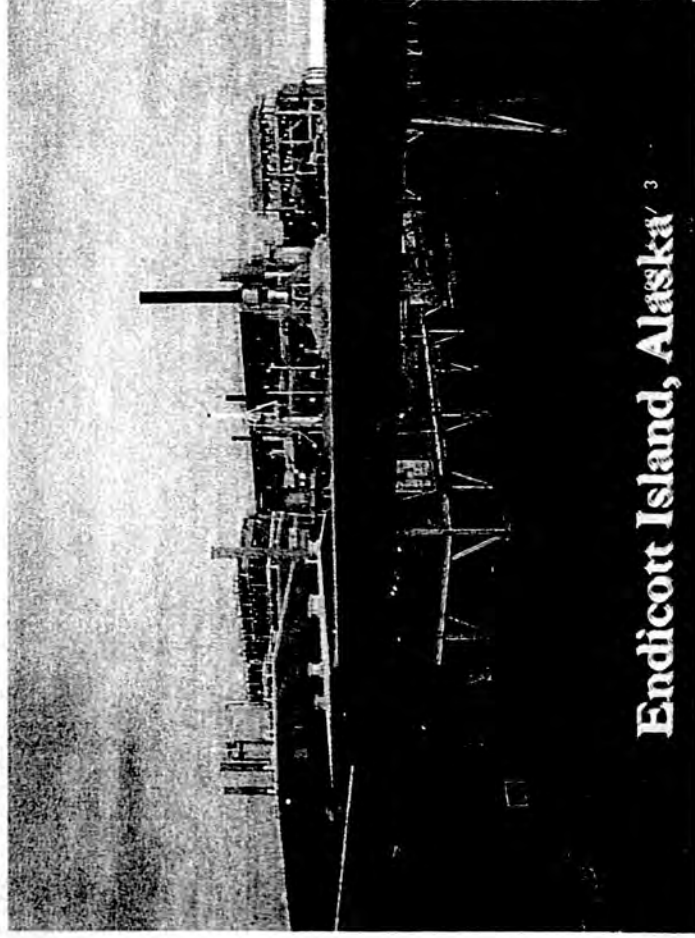
Large Projects of Importance to the State



Red Dog Mine

Alaska State Constitution

Article VIII, Natural Resources



Endicott Island, Alaska³



Auke Bay, Alaska

- Section 1 encourages the development of land and utilization of resources recognizing the collective interests of the public

Alaska State Constitution

Article VIII, Natural Resources



➤ In addition to development and utilization, conservation is a resource management objective in Section 2

Alaska State Constitution

Article VIII, Natural Resources



- OHMP Habitat Biologists are tasked to find the often delicate balance between resource development and resource protection



How Do We Do It?

Solomon Gulch Hydroelectric Facility

Get Involved Early in Process

- Assist applicants during project planning phases to identify and resolve issues up front



Duffield Peninsula Habitat Enhancement



Solve Problems During Review

- Consider site-specific conditions and develop alternatives to resolve remaining issues

37 Mile Creek, Haines Alaska

Be Realistic

- Anticipate community and economic growth

P.Mooney ADF&G -08/01/05

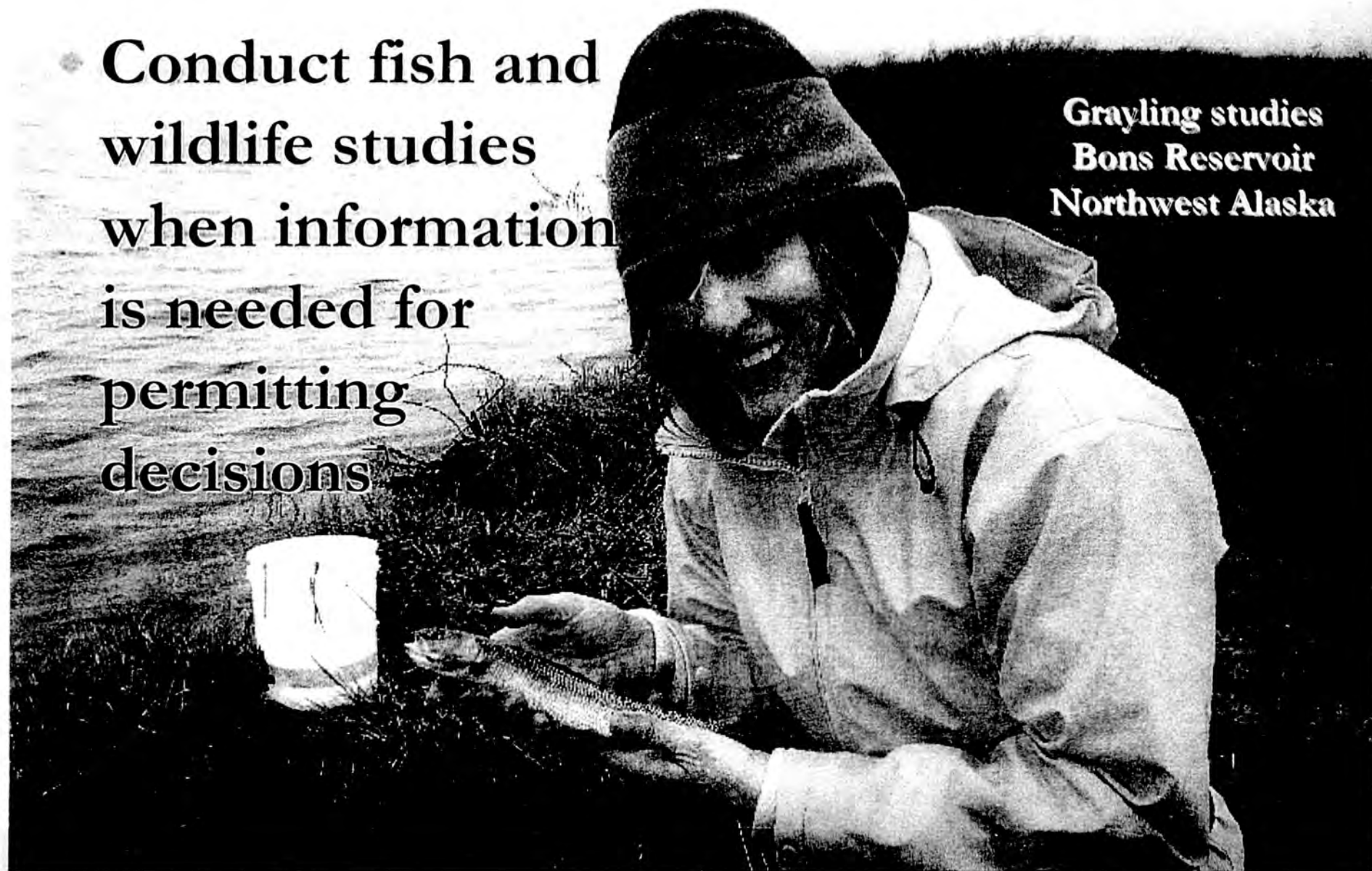


Sitka, Alaska

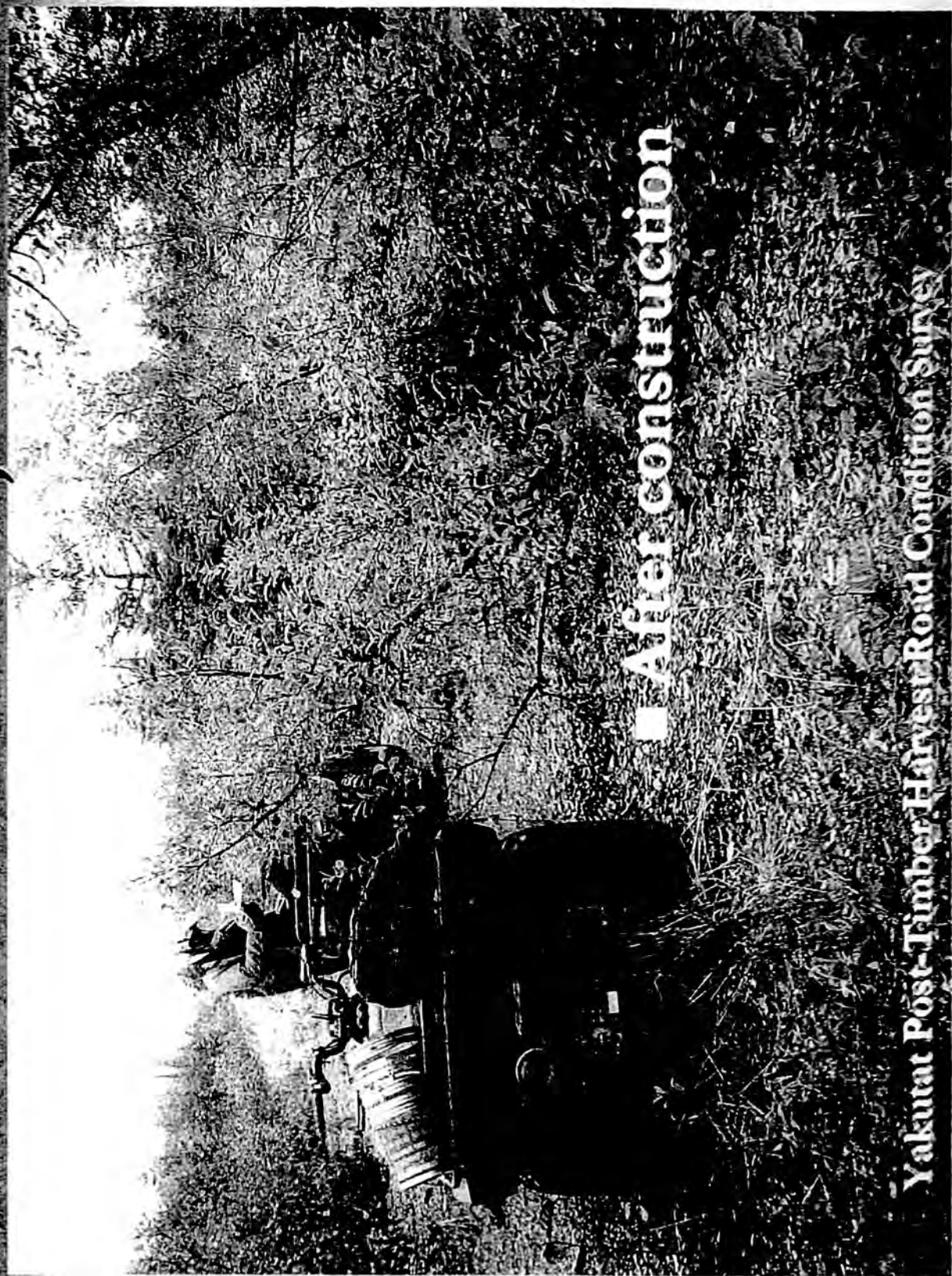
Research

- Conduct fish and wildlife studies when information is needed for permitting decisions

Grayling studies
Bons Reservoir
Northwest Alaska

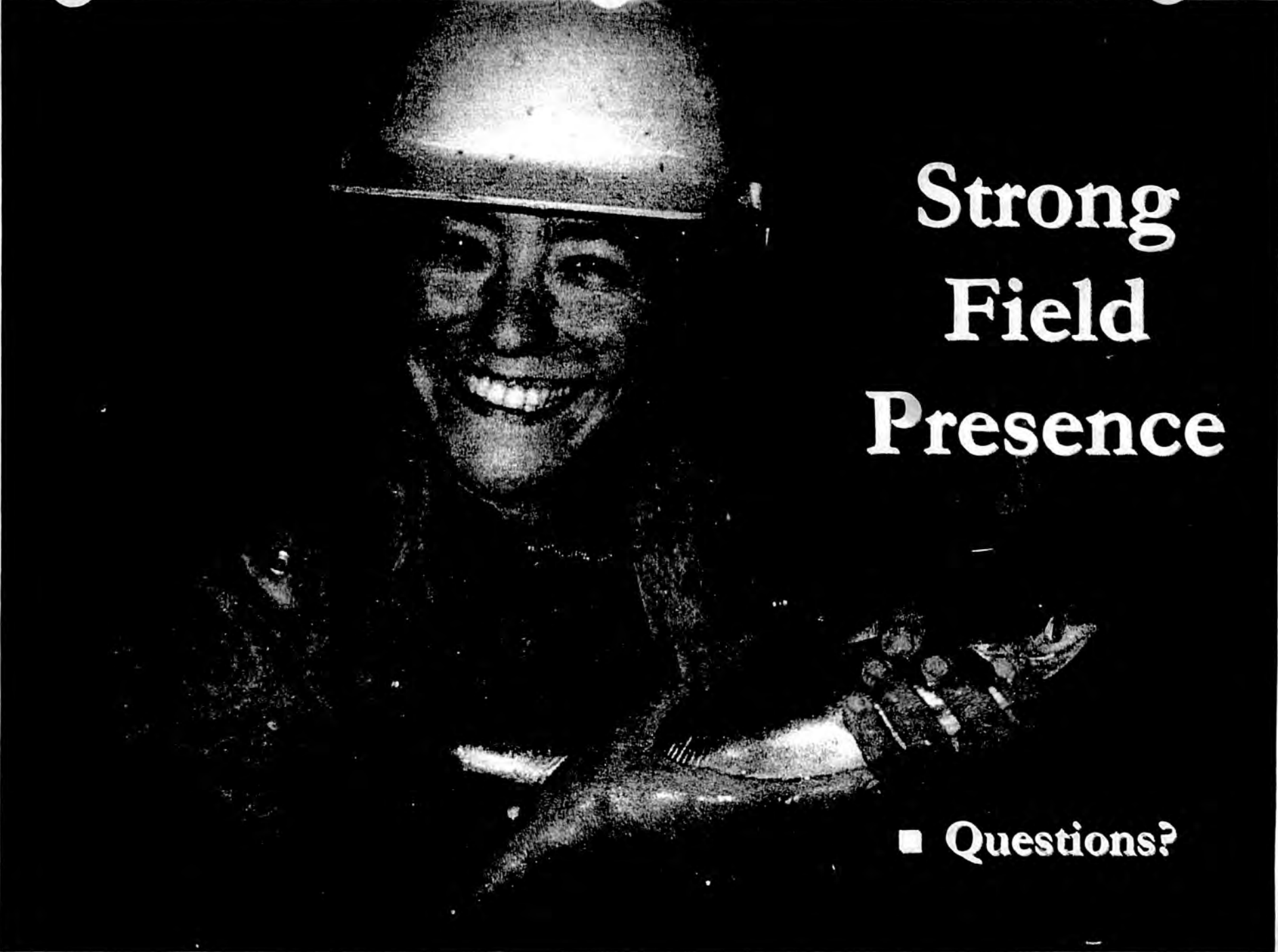


Monitor Projects



■ After construction

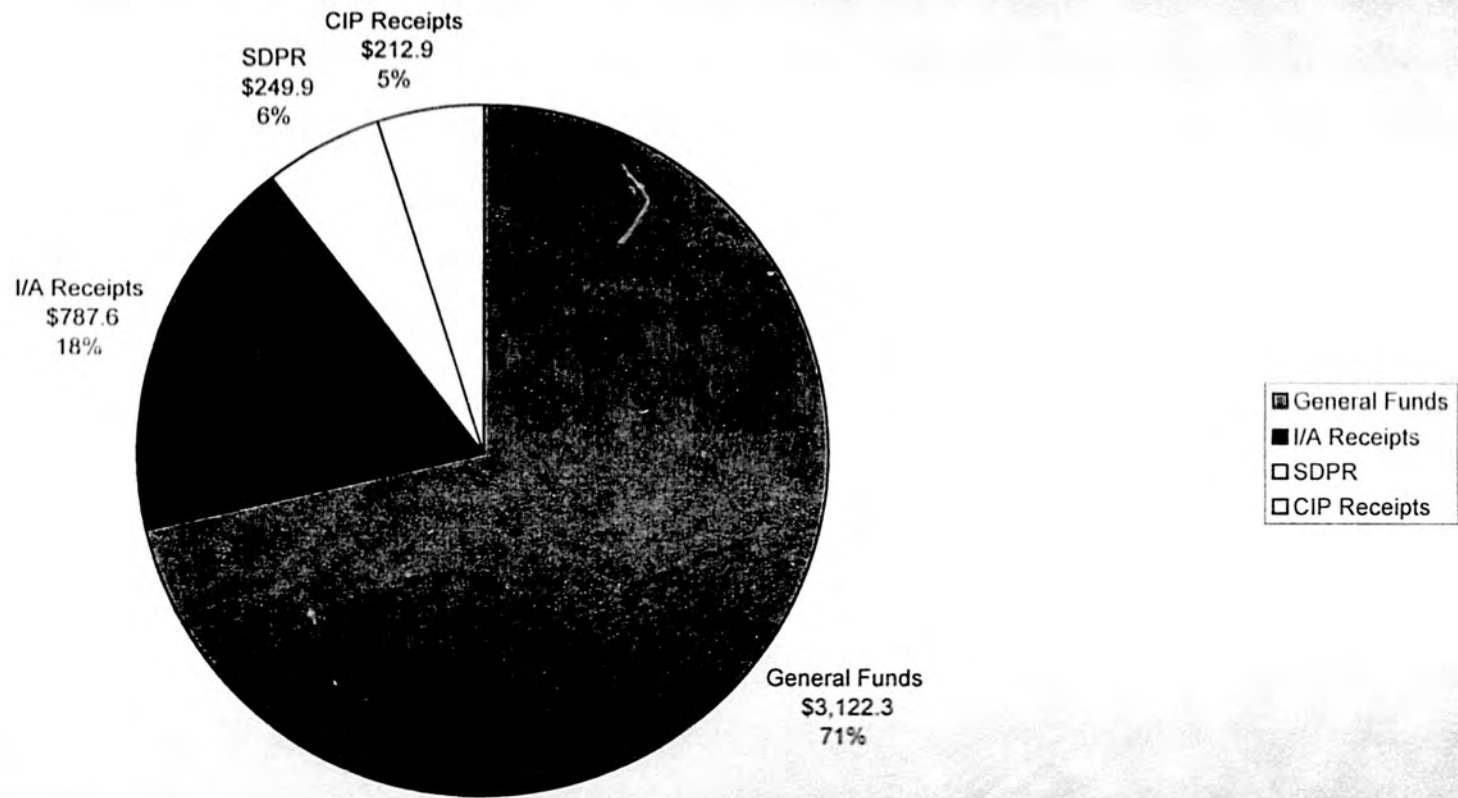
Yakutat Post-Timber Harvest Road Condition Survey

A black and white photograph of a woman wearing a hard hat and a safety vest, smiling. She is holding a tool, possibly a wrench, in her right hand. The background is dark and textured.

Strong Field Presence

■ Questions?

Department of Natural Resources
Office of Habitat Management and Permitting
FY08 Funding Sources



Missions & Measures

State of Alaska > Governor > OMB > Missions & Measures > Agency List > Habitat Mgt & Permitting

Department of Natural Resources

Office of Habitat Management & Permitting

Results Summary | **Details** | Questions/Comments

Mission

- Protect Alaska's valuable fish and wildlife resources and their habitats as Alaska's population and economy continue to expand.

Core Services

- Review applications and issue permits for activities in anadromous waterbodies and fish-bearing waters (Title 41); provide expertise to protect important fish and wildlife habitat; monitor authorized projects.
- Review proposed timber harvest activities; conduct field inspections; work cooperatively with timber operators and other governmental agencies.
- Maintain and revise the Catalog of Waters Important for the Spawning, Rearing, or Migration of Anadromous Fishes.
- Review development projects (e.g., oil and gas, hard-rock mining, roads, T41 elements of hydropower projects) authorized under other agencies' authorities.
- Conduct research on ways to minimize impacts of development projects on fish and wildlife resources.

End Result:

>>> Strategies to Achieve End Result

A: Protect Alaska's valuable fish and wildlife resources and their habitats during resource development activities. [Details >](#)

- **TARGET #1:** 100% of resource developers meet agency requirements for protection of fish, wildlife, and their habitats.
- **MEASURE #1:** Percentage of developers in compliance with their approved permit.

A1: Enhance our Title 41 review process by adding appropriate conditions to protect resources, reviewing projects in a timely manner, and monitoring, as needed. [Details >](#)

- **TARGET #1:** 100% of Fish Habitat (Title 41) permit applications are approved as is or modified with appropriate conditions to protect resources.
- **MEASURE #1:** Percentage of Fish Habitat (Title 41) permits approved as is or modified with appropriate conditions.
- **TARGET #2:** 10-day average permit review timeframe.
- **MEASURE #2:** Average number of days to complete Fish Habitat (Title 41) permit reviews.

A2: Enhance our participation in project reviews coordinated by other agencies by adding conditions to protect important habitat and by reviewing projects in a timely manner. [Details >](#)

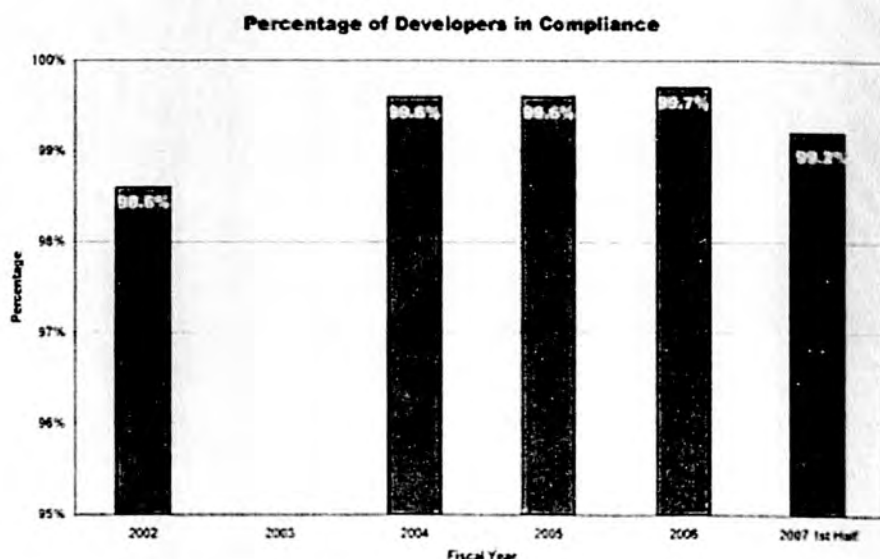
- **TARGET #1:** 93.5% of coordinated reviews include appropriate conditions to protect important habitat.
- **MEASURE #1:** Percentage of coordinated reviews where appropriate conditions are included to protect important habitat.
- **TARGET #2:** 14-day average review timeframe.
- **MEASURE #2:** Average number of days to complete reviews for projects in a coordinated review process.

Performance Measure Detail

A: Result - Protect Alaska's valuable fish and wildlife resources and their habitats during resource development activities.

Target #1: 100% of resource developers meet agency requirements for protection of fish, wildlife, and their habitats.

Measure #1: Percentage of developers in compliance with their approved permit.



of Title 41 permit applications reviews

Fiscal Year	YTD Total
FY 2004	1,597
FY 2005	2,397
FY 2006	2,648
FY 2007	877

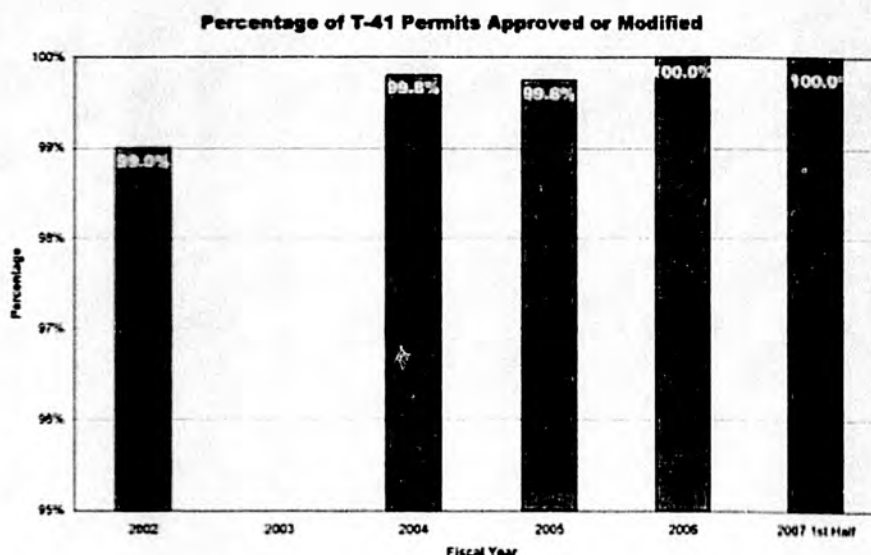
Analysis of results and challenges: 99.7% of all developers are in compliance with Fish Habitat permits (Title 41). The above percentage reflects projects where permits have been successfully issued and the developer is in compliance with their approved permit conditions. This percentage is an indication of our success in protecting fish, wildlife, and their habitats, while allowing approvable development activities to proceed. Data are not available for FY 2003, the year the Office of Habitat Management and Permitting (OHMP) moved to the Department of Natural Resources (DNR). Further, the number of Title 41 permit applications reviews continues to increase. For FY 04, 05, and 06, the numbers were 1597, 2397, and 2648, respectively, or an increase of almost 66% in 3 years. Trend-wise, this data indicates that OHMP continues to consistently achieve a high level of habitat protection simultaneous with an increase in permitted development activity.

A1: Strategy - Enhance our Title 41 review process by adding appropriate conditions to protect resources, reviewing projects in a timely manner, and monitoring, as needed.

Target #1: 100% of Fish Habitat (Title 41) permit applications are approved as is or modified with appropriate

conditions to protect resources.

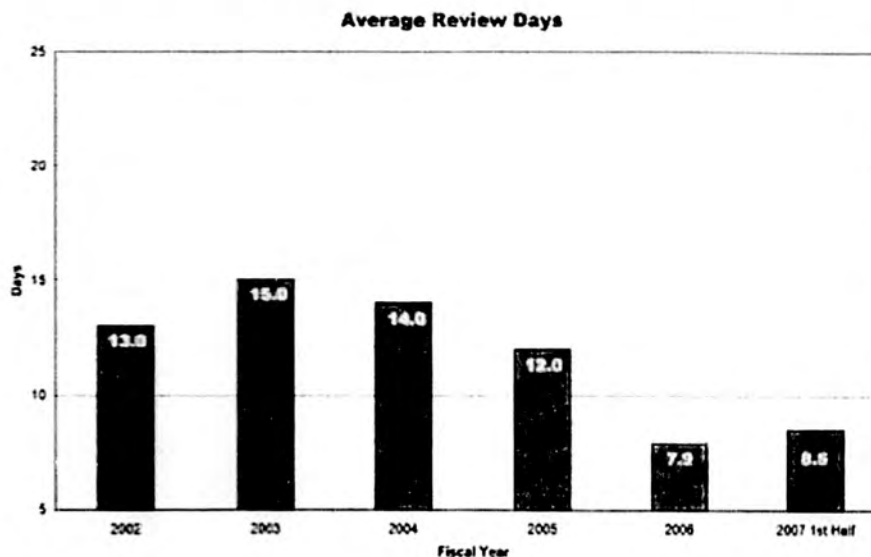
Measure #1: Percentage of Fish Habitat (Title 41) permits approved as is or modified with appropriate conditions.



Analysis of results and challenges: The Office of Habitat Management and Permitting's (OHMP) top priority is the review of Fish Habitat (Title 41) permit applications. 100% of Fish Habitat permits applications are approved as is, or modified with appropriate conditions to protect resources. This measure is an indication of the quality of our review. In spite of an 18% cut in staff and an 11% cut in budget in FY 04, OHMP continues to achieve high level results. Typically less than 1% of permits are denied or withdrawn, which means that OHMP is successful in reviewing and authorizing appropriate development activities while simultaneously protecting fish and fish habitat. Data are not available for FY 2003, the year that OHMP moved to the Department of Natural Resources (DNR). Trend-wise, this data indicates that OHMP consistently is able to approve permits while protecting the natural resources we manage.

Target #2: 10-day average permit review timeframe.

Measure #2: Average number of days to complete Fish Habitat (Title 41) permit reviews.



Average number of days to complete Title 41 permit reviews.

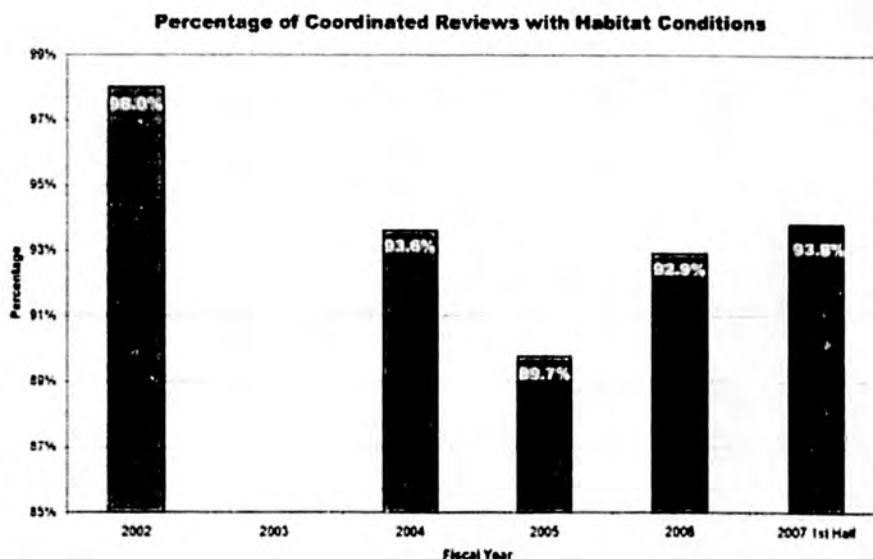
Year	YTD Total
2002	13.0
2003	15.0
2004	14.0
2005	12.0
2006	7.9
2007	8.5

Analysis of results and challenges: The Office of Habitat Management and Permitting (OHMP) quickly processes permit applications and our application review timeframe continues to decrease. This measure is an indicator of the timeliness of our reviews. Trend-wise, in spite of an 18% cut in staff and an 11% cut in budget in FY 04, OHMP continues to improve on this timeline, with an FY 06 average of just 7.9 days. This means that our permits are timely issued and appropriate development activities are not held up. Further, the number of T41 applications reviewed continues to increase. For FY 04, 05, and 06, the numbers were 1597, 2397, and 2648, respectively, or an increase of almost 66% in 3 years. For FY 07, we have increased our target to reduce our average permit review timeframe to 10 days (less than the 5-year performance average).

A2: Strategy - Enhance our participation in project reviews coordinated by other agencies by adding conditions to protect important habitat and by reviewing projects in a timely manner.

Target #1: 93.5% of coordinated reviews include appropriate conditions to protect important habitat.

Measure #1: Percentage of coordinated reviews where appropriate conditions are included to protect important habitat.

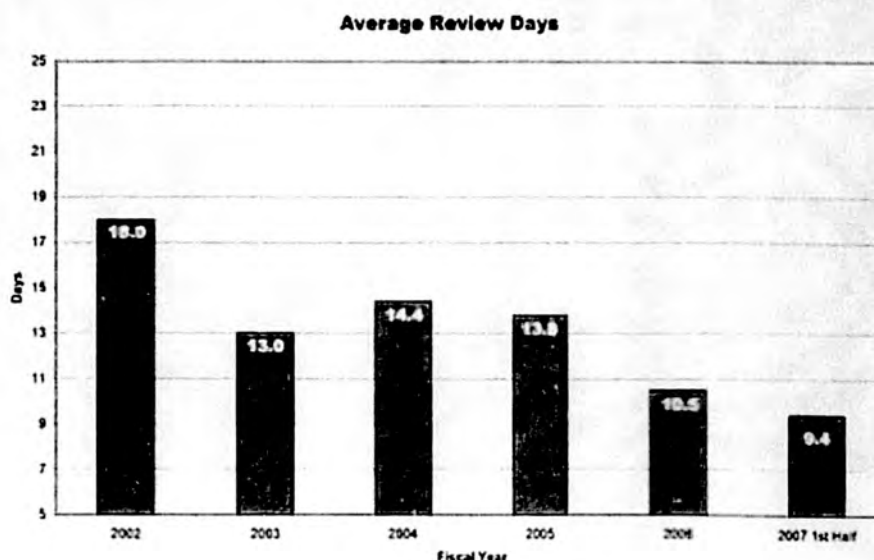


Analysis of results and challenges: The Office of Habitat Management and Permitting (OHMP) also participates in the coordinated review of other proposed resource development activities, and adds appropriate conditions to protect habitat. In spite of an 18% cut in staff and an 11% cut in budget in FY 04, OHMP continues to exceed our targets; FY 06's result was 92.9%. This means that appropriate development activities are authorized to proceed while habitat is

protected. For FY 07, we are increasing our target to 93.5% (the previous 4-year average; data are not available for FY 03, the year the Office moved to the Department of Natural Resources) to ensure continued participation at a very high level.

Target #2: 14-day average review timeframe.

Measure #2: Average number of days to complete reviews for projects in a coordinated review process.



Average number of days to complete reviews for projects in a coordinated review process.

Year	YTD Total
2002	18.0
2003	13.0
2004	14.4
2005	13.8
2006	10.5
2007	9.4

Analysis of results and challenges: The Office Habitat Management and Permitting (OHMP) quickly reviews projects in a multi-agency, coordinated review process, and our review timelines are decreasing. In spite of an 18% cut in staff and an 11% cut in budget in FY 04, OHMP continues to improve on our review timelines. The FY 06 average review time for this activity was 10.5 days. This statistic means that permits are timely issued and conditioned, and that appropriate development is not held up. Further, the number of projects reviewed continues to increase. For FY 04, 05, and 06, the numbers were 751, 831, and 1048, respectively, or an increase of almost 40% in 3 years. For FY 07, we are increasing our target to ensure our review timelines remain at no more than 14 days (the 5-year performance average).

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Office of Habitat Management and Permitting White Paper

Background:

- On April 15, 2003 Governor Murkowski moved the former division of Habitat and Restoration (H&R) from the Alaska Department of Fish & Game (DFG) to the Department of Natural Resources (DNR) via Executive Order (EO) 107. The goal of EO 107 was to "improve permitting efficiency." The EO moved .840 and .870 Fish Habitat permitting and Forest and Resources Practices Act (FRPA) review from DFG to DNR. The EO also envisioned that other review functions performed by the former Habitat and Restoration Division (H&R) (e.g., participation in consistency/NEPA/large project reviews, etc.) would move to the new Office of Habitat Management and Permitting (OHMP). The Habitat reorganization took effect on 5/1/2003. EO 107 did not move special area permitting to OHMP.
- As a result of EO 107 and the reorganization, 37 positions were transferred to OHMP, and 37 positions remained at DFG, most within the Sport Fish Division.
- Of the former H&R Habitat Biologists whose primary jobs were .840/.870 permitting, FRPA, and review of resource development activities and permits, twenty-six positions were transferred to DNR and 6 were eliminated. All the H&R management positions were eliminated. Two area offices—Sitka and Ketchikan—were closed.
- A lot of effort was spent on the reorganization including: discussions about space, budgetary matters, filling vacant positions, and drafting a Memorandum of Understanding (MOU) to detail the spread of duties with DFG. The MOU first went into effect on 10/16/03, and has been amended 4 times since then.

Accomplishments:

- In spite of an initial 18% cut in staff, 11% cut in budget, significant position vacancies, and numerous organizational issues, OHMP has continued to do an outstanding job of meeting its mission: Protecting Alaska's valuable fish and wildlife resources and their habitats as Alaska's population and economy continue to expand. Specific accomplishments are detailed in OHMP's Mission and Measures.
- In FY 06:
 - 99.7% of all developers were in compliance with Fish Habitat permits.
 - 100% of Fish Habitat permit applications were approved as is, or were modified with appropriate conditions to protect resources.
 - Average Fish Habitat permit review times were 7.9 days, even though the number of permit applications reviewed has gone up almost 66% in 3 years.
 - OHMP participated in 92.9% of coordinated reviews of proposed resource development activities.

- Average review times for projects in a multi-agency coordinated review were 10.5 days.
- To ensure their mission is met, OHMP management re-focused the Office's reduced staff on 4 work priorities:
 - T41 permitting, including updating the Anadromous Waters Catalog and Atlas.
 - ACMP consistency reviews, with emphasis on those with T41 permits or important habitat issues not addressed by other authorities.
 - Large projects of importance to the State.
 - Forest Resources and Practices Act implementation.
- OHMP Permittees and Management jointly developed "Draft Working Guidelines" to ensure that: statewide permitting and project review efforts were conducted consistently; our emphasis was directed at statutory responsibilities; and we did not duplicate responsibilities and authorities vested with other state or federal agencies.

Originally Signed October 16, 2003

Amended January 15, 2004

Amended January 18, 2005

Amended January 26, 2006

Amended September 22, 2006

**MEMORANDUM OF UNDERSTANDING
BETWEEN THE
ALASKA DEPARTMENT OF NATURAL RESOURCES
AND THE
ALASKA DEPARTMENT OF FISH AND GAME
REGARDING REVIEWS OF LAND AND WATER USE ACTIVITIES**

This Memorandum of Understanding (MOU) is established and entered into by and between the Alaska Department of Natural Resources, hereinafter referred to as DNR, and the Alaska Department of Fish and Game, hereinafter referred to as ADF&G.

PURPOSE

This MOU is intended to establish a coordinated relationship between DNR and ADF&G to address continued protection of fish and wildlife and their habitats during the review of land and water use activities, and outlines the roles and responsibilities of both departments with respect to general policy guidelines and operational procedures. This MOU is limited solely to land and water use activities subject to project review, and does not alter or modify other statutory responsibilities of the parties. This cooperation serves the mutual interest of DNR, ADF&G and the public.

DNR and ADF&G commit to work together to the fullest extent possible to share and use fish and wildlife resource information, expertise, data bases and files that are essential for evaluating project impacts and ensuring the proper protection of fish and wildlife resources in Alaska (e.g., anadromous catalog and atlas, GIS mapped data sets, fish escapement/survey data, etc.).

AUTHORITIES

Pursuant to Executive Order 107, the Office of Habitat Management and Permitting (OHMP) within the DNR is responsible for issuance of Fishway Permits and Fish Habitat Permits under AS 41.14.840 and AS 41.14.870, respectively, and certain responsibilities under the Forest Resources and Practices Act (AS 41.17). The ADF&G is responsible for issuance of Special Areas Permits under AS 16.20 and project review under the Fish and Wildlife Coordination Act, the Endangered Species Act, and other related acts of the U.S. Congress. Both agencies have responsibilities under other applicable state laws and regulations.

With regard to the Fish and Wildlife Coordination Act, ADF&G agrees that this comment authority will be exercised only for projects where direct and significant impacts¹ to fish and wildlife resources could result and where the DNR and ADF&G Deputy Commissioners have been unable to reach concurrence. If concurrence on final comments cannot be reached, the ADF&G Commissioner will determine whether ADF&G will submit comments directly, under his signature, to the relevant federal agency under the Fish and Wildlife Coordination Act.

TYPES OF REVIEWS

OHMP Lead

OHMP is the point of contact for the following permits and actions, including the associated Alaska Coastal Management Program (ACMP) consistency review:

- All Fishway Permits and Fish Habitat Permits (AS 41.14.840 and AS 41.14.870);
- *Other State Actions and Authorizations:*
 - DNR: Material Sales, Oil and Gas Lease Sales, Timber Sales, including Forest Land Use Plans, Five-Year Sale Schedules², Forest Resources and Practices Act (AS 41.17) reviews (OHMP implements certain responsibilities under this Act, including review of private Forest Practices notifications), Land Use Permits and Leases, Right-of-Way Authorizations, Water Use Permits, Lease Operations Permits for oil and gas, Mill Site Leases, Placer Mining and Hardrock Exploration Permits, and Parks Permits, unless the enabling statute states that the Division of Parks and Outdoor Recreation is to consult with ADF&G³;
 - Department of Environmental Conservation (DEC): Contaminated Site Clean-up, Solid Waste Permits, and Wastewater Permits/401 Certifications; Pesticide Permit;
 - Department of Transportation and Public Facilities (DOT&PF): Plan Reviews;
 - *Federal Action and Authorizations:* Federal Environmental Impact Statements (associated with major resource development projects), U.S. Forest Service Federal Timber Sales⁴ and other projects, Minerals Management Service actions, Corp of Engineers Civil projects and permits (404, Section 10), Natural Resource Conservation projects, Bureau of Land Management (BLM) projects, United States Fish and Wildlife Service projects, Federal Highway Administration projects, Federal Aviation Administration projects, Bureau of Indian Affairs projects, Department of Defense (Army, Navy, Air Force,

¹ "Direct and significant" means a net adverse effect on the quality or quantity of fish and wildlife resources, which could significantly affect public uses of these resources or the long-term public interest.

² For these activities, other divisions at DNR have the lead and OHMP provides comments directly to them for consideration.

³ "Parks Permits" includes "Park Use Permits" and "Non-competitive Commercial Use Permits"

⁴ The review of federal timber sales includes the assessment of whether existing Old Growth Reserves meet the old-growth objectives identified in the Forest Plan.

Marine Corps) projects⁵; Coast Guard projects, other federal agency projects, and Environmental Protection Agency Permits (e.g., NPDES, including TMDL evaluations);

- *Other Entities*: Plan review and/or EA scoping for Alaska Native Tribal Health Consortium, Alaska Village and Regional Corporation (including subsidiary profit and non-profit corporations), and local city, village, borough, and tribal government projects; Borrower's Electric Environmental Reports; and US/Canada transboundary mining projects.

Should any of the above actions be within or significantly affecting a legislatively designated state game refuge, sanctuary, critical habitat area, or range (collectively referred to as "Special Areas"), ADF&G would be the point of contact.⁶

ADF&G Lead

ADF&G is the point of contact for the following permits and actions, including the associated ACMP consistency review; ADF&G is also responsible for reviewing noted land management actions that affect the public's ability to access public lands and waters related to the use of fish and wildlife resources:

- Special Areas permits issued under AS 16.20;
- *Other State Actions and Authorizations*:
 - ADF&G: Mariculture Permits and Plans, Fish Resource Permits, Private Non-profit Salmon Hatchery permits and plans, and Hazing Permits;
 - DNR: Land Disposals (e.g., ILMAs, trade/exchange, mineral closures, agriculture, grazing, municipal entitlements and selections, etc.), State Land Management Plans (other than those related to timber)⁷; Instream Flow Reservations⁸, water rights and use permits pending or issued to ADF&G; Parks Permits where the enabling statute states that the Division of Parks and Outdoor Recreation is to consult with ADF&G.
 - DEC: Oil Spill Contingency Plans;
 - DOT&PF: Plan Reviews (inside or significantly affecting Special Areas);

⁵ DOD projects include, for example, Defense Environmental Restoration Projects and Formerly Used Defense Site Clean-ups.

⁶ Once notified of projects within or significantly affecting a Special Area, OHMP and ADF&G staff will confer to determine whether potentially significant effects to a Special Area are a primary project consideration. If so determined, ADF&G will be the point of contact and OHMP will have the lead for Title 41 permits only (e.g., Juneau Airport expansion project).

⁷ For these activities, DNR/DMLW has the lead and ADF&G provides comments directly to them for consideration.

⁸ ADF&G will continue to work with DNR/DMLW under an existing MOU to collect and analyze fisheries, wildlife, and hydrologic data to quantify the amount of water needed for fish and wildlife and their uses.

- *Federal Actions and Authorizations:* Federal Land Management Plans⁹, Federal Energy Regulatory Commission Licenses (ADF&G makes recommendations under the Federal Power Act directly to FERC)¹⁰, and Department of Defense (Army, Navy, Air Force, Marine Corps) Integrated Natural Resource Management Plans, which require Sikes Act consultation with ADF&G;
- *Municipal Actions:* Land and Water Use Plans¹¹, Comprehensive Plans and Classifications, Land Disposals; Municipal Planning and Zoning Actions (including Conditional Use Permits and Variance Reviews).
- *Access/Defense Reviews:* ADF&G also reviews proposed projects in the following categories that may affect the public's ability to access public lands and water, and monitors land use actions to assure that the public continues to have the ability to use and enjoy the fish and wildlife resources of the State. For these actions, ADF&G will provide advisory comments on access issues directly to the following entities for their consideration: DNR Division of Mining Land and Water (for the noted State Actions), the affected federal agency (for the noted Federal Actions), and the affected municipal agency (for the noted Municipal Actions):
 - State Actions: Land Use Permits and Land Leases; Rights-of-Way/Easement Authorizations (excluding those established under AS 38.35), Easement vacations and platting reviews within unorganized boroughs;
 - Federal Actions: Federal Land Conveyances under the Alaska Native Claims Settlement Act and the Native Allotment Act;
 - Municipal Actions: Platting review, creation or vacation of public Easements or Rights-of-Way.

Comments will be timely submitted in advance of the comment deadline.

- *Miscellaneous Actions:* Any actions or authorizations where OHMP would normally be the point of contact, but where a Legislatively Designated Special Area could be significantly affected.

ALASKA COASTAL MANAGEMENT PROGRAM

Both OHMP and ADF&G have responsibilities for participating in ACMP consistency reviews, as delineated under the "Lead" responsibilities, described previously. As such, both OHMP and ADF&G also review and comment directly to OPMP on new or revised ACMP Coastal District Management Plans.

⁹ For Federal Conservation System Unit (FCSU) Plans, ADF&G provides comments to the state's ANILCA coordinator, located within DNR/OPMP, or to staff in the Governor's Washington, D.C. office for consideration in development of a state position; for non-FCSU USFS plans, ADF&G provides comments to the DNR Office of Project Management and Permitting, for consideration in development of a state position.

¹⁰ OHMP would comment only on AS 41.14.840/.870 permits associated with FERC hydroelectric projects.

¹¹ For municipal land use plans, ADF&G has the lead on both access and habitat issues, but ADF&G will seek input from OHMP on habitat issues when plans may affect AS 41.14 permits.

ANADROMOUS FISH WATERS

OHMP and ADF&G have agreed to jointly share the responsibilities for updates to the *Catalog of Waters Important to the Spawning, Rearing, or Migration of Anadromous Fishes* (Catalog) and its associated atlas, *An Atlas to the Catalog of Waters Important to the Spawning, Rearing, or Migration of Anadromous Fishes* (Atlas). The Catalog and Atlas are based upon data contained within ADF&G's Fish Distribution Database (FDD). Nominations to the Atlas and Catalog will be reviewed and approved by both OHMP and ADF&G. Printing of the Atlas and Catalog will be done by ADF&G, with OHMP providing financial support. Specifically:

- OHMP is responsible for the cost of duplication and distribution of the final Atlas maps and Catalogs to DNR area and field offices;
- ADF&G is responsible for the cost of duplication and distribution of the final Atlas maps and Catalogs to ADF&G area and field offices; and
- OHMP and ADF&G jointly responsible for the duplication and distribution of all additional copies of the Atlas maps and Catalog that are produced, with costs prorated per copy required by each agency.

SPAWNING AREAS

Fish spawning areas are essential to maintain viable fish populations and must be properly protected. For purposes of permitting various types of activities, OHMP and ADF&G define "freshwater fish spawning areas" as areas within lakes, streams, rivers, or other flowing fresh waters that offer suitable habitat for fish spawning and where spawning adults, incubating eggs, or alevins are present. In identifying and managing spawning areas, the agencies consider the temporal and spatial aspects of spawning habitats and activity, the proposed activity, and potential impacts in such a manner that the continued long-term use and availability of spawning habitat is properly protected.

COORDINATION PROCESS AND REVIEW CATEGORIES¹²:

Both agencies continue to have a role in the review of land and water use activities based on the statutory authorities and review responsibilities described above. For both OHMP and ADF&G, it is the lead agency's responsibility to incorporate or attach the comments received, as they deem appropriate, subject to the dispute resolution process. Each agency may continue to interact directly with applicants regarding their statutory permit authorities. To promote effective cooperation regarding habitat management and permitting in such a manner as to avoid duplicative activities, the ADF&G and DNR agree to consult and coordinate as follows:

¹² See Attachment 1 for additional explanation and examples.

When OHMP is the point of contact, the following three categories apply:

1. OHMP need not coordinate with ADF&G on AS 41.14.840/.870 reviews or projects/activities covered by General Concurrences, Nationwide Permits, or other General Permits;
2. OHMP will coordinate directly with area biologists and other staff within ADF&G divisions to determine if significant impacts to fish and wildlife habitat exist when there is a need for area or resource specific information or when there is a known interest in a particular project by an affected division¹³. It is expected that most resource development activities will be in categories 1 and 2; and,
3. OHMP will coordinate through the designated ADF&G contact when there is a need for an ADF&G coordinated response because a proposed land or water use activity will have a significant net adverse effect on the quality or quantity of fish and wildlife resources, which could significantly affect public uses of these resources or the long-term public interest.¹⁴

The OHMP Operations Manager will make the determination as to whether a project is a Category 3, seeking input from ADF&G, as needed, and will inform the ADF&G Program Manager of our decision. If ADF&G disagrees, the decision can be elevated under the Dispute Resolution procedures.

When ADF&G is the point of contact:

1. ADF&G need not coordinate with DNR/OHMP on AS 16.20 reviews or projects/activities in Special Areas requiring a permit covered by General Concurrences, Nationwide Permits, or other General Permits.
2. For all other activities, as detailed in the TYPES OF REVIEWS section of this MOU, ADF&G will coordinate directly with the affected State or Federal agency and, to ensure that the State has a coordinated response, with OHMP biologists, when AS 41.14.840/.870 permits are also required.

DISPUTE RESOLUTION

After receipt and evaluation of agency comments for projects/activities that could have a net adverse effect on the quality or quantity of fish and wildlife resources, which could significantly affect public uses of these resources or the long-term public interest, each

¹³ OHMP will notify the designated ADF&G contact when we plan to proceed under Category 2 for selected high interest projects if contacting more than one ADF&G division is anticipated.

¹⁴ The proposed Pebble Gold-Copper Project is the one exception to the Tier III project scheme delineation. For this project, both OHMP and ADF&G will fully participate in the review process and comment directly to the DNR Large Mine Project Team.

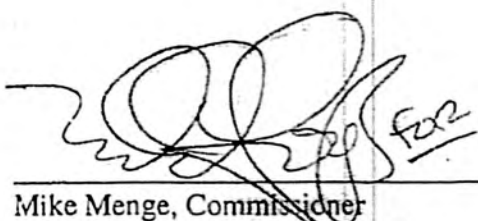
agency will provide the other agency's contact with its draft-consolidated comments. If the commenting agency disagrees with the review agency's draft comments, and staff cannot resolve differences, management staff will consider and resolve concerns in the following order:

1. OHMP Operations Manager and ADF&G Sport Fish Region V Regional Supervisor.
2. OHMP Executive Director and appropriate ADF&G Director.
3. DNR Deputy Commissioner and ADF&G Deputy Commissioner.

The intent of the section allowing projects/activities to be elevated is to ensure that major issues of significant impact to fish and wildlife resources and their habitat receive policy-level attention. It is envisioned, by both DNR and ADF&G, that every effort will be made to minimize the number of projects/activities that are elevated.

This MOU shall become effective on the date when last signed and shall remain in force until terminated by mutual agreement, by amendment, or by either commissioner, upon 30 days notice in writing to the other commissioner, of his/her intention to terminate upon a date indicated. Amendments to or modification of this MOU may be proposed by DNR or ADF&G at any time and shall become effective upon written approval by the commissioners of DNR & ADF&G.

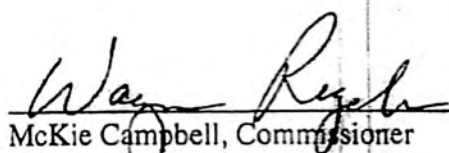
By:


Mike Menge, Commissioner
Alaska Department of Natural Resources

Date

10/27/06

By:


McKie Campbell, Commissioner
Alaska Department of Fish and Game

Date

10/27/06

AMENDMENTS

1. Amended on January 15, 2004 to: 1) Clarify that OHMP's point of contact authority for DNR timber sales includes Forest Land use Plans and Five-Year Sale Schedules; 2) Provide that ADF&G's comments to DNR on State Land Management Plans are not limited to access issues; and 3) Clarify that DNR, via the Office of Project Management and Permitting and the state's ANILCA Coordinator, are the contact for all Federal Land Management Plans and provide that ADF&G's comments on these plans are not limited to access issues. ADF&G will provide comments to DNR, for consideration, during the development of the state position.
2. Amended on January 18, 2005 to: 1) Clarify purpose language; 2) Clarify OHMP lead for the review of other State and Federal actions related to OHMP responsibilities; 3) Clarify that OHMP has the lead for the review of projects proposed by other named entities; 4) Clarify that ADF&G has the lead for the review of municipal land use plans and noted Access/Defense reviews; 5) Clarify that ADF&G has the lead for State or Federal actions or authorizations where a Legislatively Designated Special Area could be significantly affected; 6) Clarify ADF&G's Access/Defense responsibilities; 7) OHMP's and ADF&G's joint responsibilities regarding updates to the Catalog and Atlas; 8) Clarify ADF&G's coordination process for projects where they have the lead; 9) Clarify lead agency responsibility for addressing comments, 10) Clarify, in Attachment A, that some oil and gas projects could be handled as a Category 2 provided that impacts can be mitigated to an acceptable, feasible and prudent level; 11) Clarify, in Attachment A, that OHMP will not coordinate comments on changes to laws and regulations that provide protection for fish and wildlife habitats—instead, each agency will comment separately, to the proposing agency, as appropriate.
3. Amended on January 26, 2006 to: 1) Clarify the title of referenced Parks permits to ensure that both "Park Use Permits" and "Non-competitive Commercial Use Permits" are covered and clarify that ADF&G has the lead on these permits if the enabling statute states that the Division of Parks and Outdoor Recreation is to consult with ADF&G; 2) Clarify that the OHMP lead on the review of U.S. Forest Service timber sales includes the assessment of whether existing Old Growth Reserves meet the old-growth objectives identifies in the Forest Plan; 3) Clarify that the OHMP lead on the review of NPDES permits includes any associated TMDL evaluations; 4) Clarify that OHMP has the lead on US/Canada transboundary mining projects; 5) Clarify OHMP responsibilities on FERC hydroelectric projects; 6) Clarify that ADF&G has the lead on Department of Defense plans that require consultation under the Sikes Act; 7) Clarify that ADF&G has the lead on Municipal Planning and Zoning Actions; 8) Clarify that both OHMP and

ADF&G review and comment on new or revised District Coastal Management Plans; 9) Added a definition of "spawning area"; 10) Revise dispute resolution referral to reference new Region V Supervisor; and 11) Revise signatures to reflect current Commissioners.

4. Amended September 22, 2006 to: 1) Add the DEC Pesticide Permit to the list of Permits where OHMP has the lead; and 2) Clarify that the proposed Pebble Gold-Copper project is an exception to the normal project review delineation, with OHMP as the lead.

Amended January 18, 2005

ATTACHMENT A

Criteria for OHMP Coordination with ADF&G on Resource Development Activities

When OHMP is the point of contact, the following three categories apply:

- (1) OHMP need not coordinate with ADF&G on AS 41.14.840/870 reviews or projects/activities covered by General Concurrences, Nationwide Permits, or other General Permits;
- (2) OHMP will coordinate directly with area biologists and other staff within ADF&G divisions to determine if significant impacts to fish and wildlife habitat exist when there is a need for area or resource specific information or when there is a known interest in a particular project by an affected division¹. We expect that most resource development activities will be in categories 1 and 2; and
- (3) OHMP will coordinate through the designated ADF&G contact when there is a need for an ADF&G coordinated response, because a proposed land or water use activity will have a significant net adverse effect on the quality or quantity of fish or wildlife resources, which could significantly affect public uses of these resources or the long-term public interest.

Criteria/Examples for Category #2: Consulting directly with ADF&G division personnel:

•During the pre-project scoping process for a project/activity in an area of known high interest to a particular division(s) (e.g., fall chum spawning area in the Tanana at Big Delta, placer mining in the Hogatza drainage, water use from lakes supporting lake trout on North Slope, Kenai River Bank Stabilization);

It is anticipated that identification of "known high interest to a particular division(s)" will be based on on-going and historic interactions with the ADF&G divisions; expression of regional ADF&G preferences; and will be subject to revision based on cumulative impacts, reevaluations of ADF&G priorities, etc. Periodic adjustments, either informally or through elevations, may be required to ensure that the identified threshold adequately protects the public interest.

¹ OHMP will notify the designated SF contact when we plan to proceed under Category 2 for selected high interest projects and where we anticipate contacting more than one ADF&G division.

- For oil and gas project/activity involving land and water use activities potentially affecting both fish and wildlife and their habitat and uses of fish and wildlife to the extent that a federal environmental assessment or federal environmental impact statement is needed (e.g., Alpine satellite developments in the Colville Delta and NPR-A)²;
- For other types of projects/activities having potential for long-term impacts (i.e., multiple years), but such impacts can be mitigated to an acceptable, feasible and prudent level (e.g., oil and gas exploration and licensing, hard rock mines, major highway construction or realignments, federal timber sales);³
- project/activity where a decision is made to not require mitigation based on a variety of factors, including economics, that may result in the minor loss of fish and wildlife; DNR will consult with ADF&G on this decision (e.g., decision not to require fencing of a tailing impoundment where some loss of animals is expected over time)⁴;
- project/activity affects a specific fish or wildlife species and we know that there is existing expertise and/or ongoing research that is important to making decisions regarding mitigation of impacts;⁵
- project/activity affects palustrine and lacustrine wetlands that are proximate to and contiguous with waters supporting high quality anadromous or resident fish species (e.g. contiguous Kenai River wetlands); and
- unauthorized projects/activities that may result in enforcement actions.

Criteria/Examples for Category #3: Requesting a coordinated ADF&G response via Sport Fish Division⁶

- Project/activity involving disposal of lands with long-term impacts to a variety of fish and wildlife species and their habitats as well as the human uses of the fish and wildlife resources (e.g., oil and gas lease sales in caribou calving areas, oil

² Our rationale for placing various oil and gas projects in this category of direct coordination is that the State's best interest finding has already been made to develop those resources with provisions in the lease to protect fish and wildlife resources and habitats. The project is in the implementation phase and may include preparation of federal EA/EIS NEPA documents or review of Project Operations Plan:

³ Projects in this category include such things as mines that are on valid existing mining claims or other projects (e.g., roads, airports, harbors, oil and gas) that have impacts of lesser duration than projects in category #3.

⁴ Coordination with ADF&G personnel would be specific to those individuals with specific species expertise and/or the area management responsibilities.

⁵ Coordination with ADF&G personnel will be specific to those individuals with the specific species expertise and/or the area management responsibilities.

⁶ In order for this coordination to work most effectively, we believe that a direct ADF&G contact (coordinator) would be highly beneficial in the Fairbanks, Anchorage, and Juneau offices.

and gas lease sales in areas of high waterfowl use, oil and gas lease sales in Bristol Bay, oil and gas lease sales in the Arctic National Wildlife Refuge)⁷;

- project/activity with a high probability for long term impacts and uncertainty with respect to rehabilitation (e.g., new hard-rock mines with acid rock drainage potential affecting downstream aquatic habitats);⁸

- project/activity that involves major changes in terms of impacts to fish and wildlife along with changes in access that affect uses of fish and wildlife.

⁷ Our rationale for placing some oil and gas proposed lease sales in this category is that the state has not yet made the State's best interest finding or developed a State position on federal sales/actions, and that some of these projects have long-term potential impacts to fish and wildlife and their habitat. In cases such as these, with major resource development issues, we believe it is essential ADF&G prepare a position that represents the department and the various divisions. Some EA/EIS projects may be covered by category 2 consultations.

⁸ Our rationale for placing specific hard-rock mines in the category of needing a coordinated ADF&G position is that some of these mines, but not all, have real long-term potential impacts to fish and wildlife resources and their habitat. Any future new mine, similar to Red Dog, would fall in this category. Conversely, the True North mine located near the existing Fort Knox mine would not fall into this category because it will not have the potential for long-term adverse impacts to fish and wildlife and their habitat.

*FVI only - you asked for a number of
testifiers in support and opposition*

Oppose HB41

Groups:

1. ROD ARNO, Executive
Director, Alaska Outdoor
Council (AOC), Governor's
Transition Team Member
2. DENNIS WATSON, Mayor of
City of Craig, Alaska

Constituents:

3. WALTER HICKEL
4. PETER METCALFE from
Juneau, self-representation

Support HB41

Groups:

1. DON BREMNER, Natural
Resource Coordinator, Southeast
Alaska Inter-Tribal Fish and
Wildlife Commission
2. CATHERINE CRAWFORD,
Executive Director, Cordova
District Fisherman United
3. KENNETH DUCKET,
Executive Director, United
Southeast Alaska Gillnetters
4. MARK KAELEKE, Director,
Southeast Alaska Projects, Trout
Unlimited
5. MATTHEW LACROIX,
Fisheries Biologist, Alaska
Department of Fish & Game
(ADF&G)
6. JAMAL MOSS, American
Fisheries Society, Alaska
Chapter
7. MARK RICHARDS, Alaska
Backcountry Hunters and
Anglers
8. KRISTIN SMITH, Copper River
Watershed Project (CRWP)
9. STEPHEN TAUFEN,
Groundswell Fisheries
Movement, Watchdog for
citizen-taxpayers and harvesters
and communities in Alaska
fisheries

10. KATE TROLL, Alaska
Conservation Alliance

Constituents:

11. BRUCE BAKER from Auke
Bay, self-representation, former
Deputy Director for ADF&G
Habitat Division
12. BARBARA CARLSON from
Anchorage, self-representation
13. HAL GEIGER, Past President of
American Fisheries Society
14. RALPH GUTHRIE from Sitka,
self-representation, commercial
fisherman
15. DOUGLAS HILL from
Anchorage, self-representation
16. ROBERT HOWARD from
Palmer, self-representation
17. DR. VI JERREL from Anchor
Point
18. BETSY MCCracken from
Anchorage, self-representation
19. MIKE MILLIGAN, Kodiak
20. JOHN MURRAY from Sitka,
self-representation
21. JEFF PARKER from Anchorage,
self-representation (attorney
practicing law relating to
fisheries)
22. THOMAS PEBLER from
Anchorage, self-representation,
retired Fish & Game
- ✓ 23. CARL ROSIER, Retired
Commissioner, Alaska
Department of Fish & Game
(ADF&G)
24. HERB SIMON from Nelchina,
self-representation
25. LANCE TRASKY from
Anchorage, self-representative
26. ED WEISS from Chugiak, self-
representation, Habitat Biologist
for OHMP

FVI

From an e-mail from the Senate Clerk

"traditionally, we get executive orders on the first day of session. Below is the Statute which says the executive orders shall be submitted to the presiding officer of each house on the day the house organizes. I've also included Article III, Sec. 23, of the Constitution. (It looks like when the Constitution was written, they didn't expect session to last much longer than 60 days!)

Sec. 24.08.210. Executive orders. An executive order proposing a change in the executive branch and requiring the force of law under art. III, Sec. 23, Constitution of the State of Alaska shall be submitted to the presiding officer of each house on the day the house organizes. The legislature has 60 days of a regular session, or a full session if of shorter duration to disapprove the order. Unless disapproved by a special concurrent resolution introduced in either house, concurred in by a majority of the members in joint session, the order becomes effective at a date thereafter to be designated by the governor. An order submitted to but not disapproved by the legislature shall be published in the bound session laws and any codification of state law.

The Constitution. Article III, Sec. 23. Reorganization. The governor may make changes in the organization of the executive branch or in the assignment of functions among its units which he considers necessary for efficient administration. Where these changes require the force of law, they shall be set for in executive orders. The legislature shall have sixty days of a regular session, or a full session if of shorter duration, to disapprove these executive orders. Unless disapproved by resolution concurred in by a majority of the members in joint session, these orders become effective at a date thereafter to be designated by the governor."



Alaska State Legislature
Representative Bob Buch
Representative Les Gara
Representative Bryce Edgmon
Official Business, State Capitol, Juneau, Alaska, 99801

October 30, 2007

Commissioner Tom Irwin
Department of Natural Resources
550 W. 7th Ave Ste 1400
Anchorage, AK 99501-3561

Deputy Commissioner Dick Lefebvre
Department of Natural Resources
550 W. 7th Ave Ste 1400
Anchorage, AK 99501-3561

Deputy Commissioner Ken Taylor
Department of Fish and Game
333 Raspberry Rd.
Anchorage, AK 99518

Re: Letter of Support for Reversing Governor Murkowski's Habitat Division Transfer.

Dear Commissioner Irwin and Deputy Commissioners Lefebvre and Taylor:

Thank you for agreeing to look at whether the State should reverse former Governor Frank Murkowski's controversial Habitat Division transfer. As you likely know, we feel strongly that the state's fishing waters will be best protected in the future by reversing Governor Murkowski's Habitat Division order. We believe the long-term protection of our fisheries will be best achieved by a return of the Habitat Division to the Department of Fish and Game. And, as Commissioner Irwin knows, while we feel the Division is protected well under his watch as DNR Commissioner, we fear that a future Commissioner would have the statutory ability to undermine the Habitat Division's mandate to protect our fisheries. In contrast, if Habitat were returned to the Department of Fish and Game, that Commissioner would statutorily not have the discretion to undermine the Division's mandate. That is the issue we face – and why we strongly recommend a decision by Governor Palin to return the Habitat Division back to the Alaska Department of Fish and Game (ADF&G). It is our hope that this will be the Governor's position.

While we will keep pushing HB 41, our legislation to require Habitat's return to ADF&G, we appreciate that you are looking into this. In the best of worlds, an executive decision on this issue is preferable to legislation. We also appreciate DNR's good stewardship over the Habitat Division under Commissioner Irwin as you consider this issue. While we would be satisfied if the move were made in the next year or so, we would agree that the move requires some deliberation, and perhaps a consciously slow transfer rather than one made in an artificially short timeframe.

Alaska has a proud history of fishing stream protection. Only in recent years, because of a series of decisions by former Governor Murkowski (cutting Habitat staff; relaxing our Mixing Zone anti-pollution measures) has this state taken a direction that threatens to damage our unparalleled fisheries in the future. Our legacy should be one that includes the protection of the waters our subsistence, sport, and commercial fishermen rely upon. There's a reason you can't catch a 30-inch trout, a 30-inch steelhead, a 60-pound King salmon, or even a two pound Arctic Grayling, almost anywhere else in the world, and that you still can in Alaska. This state's record of fisheries protection is a strong one.

The Habitat Division is charged with protecting our fishing streams from damaging development. From Statehood until 2003, Habitat had been located under the Commissioner of Fish and Game. At the time of the move, every former Commissioner from the Department of Fish and Game (Republicans, Democrats, and Independents alike) opposed the transfer of that Division to the Department of Natural Resources.

Under Alaska law, the Commissioner of the Department of Fish and Game has no discretion to take action that would damage our fishing streams. The mandate of that Department is to: ***"manage, protect, maintain, improve, and extend the fish, game and aquatic plant resources of the state in the interest of the economy and general well-being of the state,"*** (AS 16.05.020).

In contrast, under our statutes, the Commissioner of the Department of Natural Resources can decide to favor either fisheries protection *or* development. While Commissioner Irwin has read this mandate in a manner that, we believe, favors responsible development, a future commissioner will have the discretion, by statute, to favor damaging development over fisheries protection. The DNR statutes provide: ***"The Department of Natural Resources shall administer the state program for the conservation and development of natural resources"*** (AS 44.37.020). This language leaves room for a future commissioner to favor questionable development projects over the interest of fisheries protection.

In recent hearings held by the Fisheries Committee in Bristol Bay as well as hearings on HB 41, the public has spoken loudly that it supports a move of Habitat back to the Department of Fish and Game. A transfer of this division makes sense, is the prudent thing to do, and is supported by the vast majority of Alaskans. More people testified on HB 41 last session, and during subsequent fisheries hearings, than on almost any other bill the Legislature considered in the past year.

We would be happy to sit down with you to talk about this further, and, in the meantime, hope you will decide to return the Division back to the Department of Fish and Game. Feel free to contact us if you have any questions.

R. L. Buch

Rep. Bob Buch

Sincerely,

Les Gara

Rep. Les Gara

Bryce Edgmon

Rep. Bryce Edgmon

cc: Governor Sarah Palin

Protecting the integrity & biological diversity of the Anchorage Coastal Wildlife Refuge....



**FRIENDS OF
THE
ANCHORAGE
COASTAL
WILDLIFE
REFUGE**

**PO Box 220196
Anchorage, AK
99522-0196**

**E-mail:
carlson1@gci.net
Phone: 907-248-2503
Fax: 907-248-3159**

The Honorable Paul Seaton,
The Honorable Bill Thomas,
The Honorable Kyle Johansen,
The Honorable Gabrielle LeDoux,
The Honorable Peggy Wilson,
The Honorable Bryce Edgmon,
The Honorable Lindsey Holmes,
The Honorable Les Gara,
The Honorable Harry Crawford,
The Honorable Beth Kerttula,
The Honorable Bob Buch
Alaska State House of Representatives
Juneau, Alaska (Sent by email to all of the above)

January 03, 2008

Dear Representatives Seaton, Thomas, Fisheries Committee Members and
HB41 Sponsors:

Please return the function of the Habitat Division from the Alaska Department of Natural Resources (ADNR) to the Alaska Department of Fish and Game (ADF&G). It is the right thing to do. The transfer of ADF&G's fish habitat protection statutes to the ADNR has significantly reduced the level of protection for this vital and renewable resource. This was testified to during a Legislative hearing in 2006 by both the Alaska Miner's Association and biologists who have worked under ADF&G & ADNR. The

ethical solution is to return the Anadromous Fish Act and the Fish Ways Act with their statutory protections back to the ADF&G. It is also critical to see that this includes the funding of biologists & staff is adequate to meet the needs of this return. Professional biologists and the Alaska public need to recover from the wrongful removal of checks and balances that occurred during Governor Murkowski's tenure.

I write today on behalf of Friends of the Anchorage Coastal Wildlife Refuge (FAR), which is a registered 501(c-3) non-profit in good standing with the State of Alaska. FAR is an organization of citizens and professionals whose mission is " to preserve the integrity and biological diversity of the Anchorage Coastal Wildlife Refuge. " We believe that good stewardship and wise development go hand in glove when it comes to taking care of the land, waters and air upon which we all depend. I know this well as I am an *Unangan* (Aleutian Aleut) who grew up in Unalaska, where most of my family still lives and depends on wise development and good stewardship. Growing up we were taught that it is our responsibility to not foul our nests—that we must judiciously take care of the resources that we have the opportunity to use while we are on this earth. First and foremost, we must ensure that any development we undertake, preserves resources for future generations. The belief systems of Alaska Native peoples are built around living the right ways as human beings; doing the things we know are right.

Similarly, the first Alaska Legislature enacted the Anadromous Fish Act and the Fish Ways Act setting in place formative regulations which were part of Title 16 of the Alaska Statutes from 1959 until 2003. The statutes mandated the ADF&G Commissioner to " manage, protect, maintain, improve, and extend the fish, game and aquatic plant resources of the state in the interest of the economy and general well-being of the state. " Alaskans had every reason to believe that care would be taken of our valuable resources when development projects were being considered and undertaken. Every ADF&G Commissioner served under the aforementioned mandate, however, when Governor Murkowski set into motion Executive Orders 106 and 107, with their transfer of authority to ADNR this assurance effectively evaporated. This is because the Deputy Commissioner of ADNR serves under no such mandate and has complete discretion as to the level of protection given fish and habitat for any given project.

Furthermore, along with the concerted effort to expedite permitting for resource development, Governor Murkowski transferred the Alaska Coastal Management Plan (ACMP) into the ADNR,

making a convoluted mess of the regulatory process which had long served Alaska well. We believe that these executive orders were in error, and that they place future generations of Alaskans at risk. We believe that these actions must be reversed.

As part of your responsibilities as committee members you will want to review a report that was due in December of 2007. The deputy commissioner of both ADF&G and ADNR were charged with evaluating the effects of EO 107 and reporting back to the commissioners so that they could make a joint recommendation to the Governor.

We urge you, as leaders with enormous responsibility, to consider, that while the well-being of the citizens of Alaska depends upon the wise development of our resources, it equally depends on the careful and diligent stewardship of that which sustains us. As our population grows and we build continue to build this great land, *Alaxsxâx*, it is important to remember these valuable rules for living which are shown side by side in the two extant dialects of *Unangam tunuu*, the language of the *Unangâx*, and English.

- *Tuman tanâx agliisaâtan*. E / *Tanâx agliisada*. W / Take care of the land.
- *Tuman alâgûx agliisaâtan*. E / *Alâgûx agliisada*. W / Take care of the sea/ocean.
- *Tuman taangâx agliisaâtxin*. E / *Taangâx haqayaasada*. W / Take care of the water.

We urge you to move of the functions of the Habitat Division back to the ADF&G and insure its supportive funding. Properly, this will require fully restored coordination functions within the department on ALL issues affecting fish and wildlife and their habitats (not just select involvement per the existing ADFG/DNR MOU) .

Qâgaasakung, we thank you, for your time and consideration.

Sincerely,

Barbara Svarny Carlson
President & Executive Director

Friends of the Anchorage Coastal Wildlife Refuge (FAR) is a non-profit organization of citizens and professionals whose mission is *To preserve the integrity and biological diversity of the Anchorage Coastal Wildlife Refuge*. This easily damaged subarctic saltmarsh system supports an unusual diversity of plants, birds, mammals and invertebrates, and is of continental conservation importance. The proximity of the refuge to Alaska's largest city makes it important for public education and enjoyment but also makes it highly vulnerable. Among the refuge's residents and migratory visitors are the lesser sandhill cranes, the lesser snow geese, rock sandpipers and the Cook Inlet beluga.

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MEMORANDUM

January 25, 2008

SUBJECT: Comparison of HB 41 and The Fisheries Habitat Protection Initiative (Work Order No. 25-LS0225\C)

TO: Representative Les Gara
Attn: James Feldman

FROM: Brian J. Kane *BJK*
Legislative Counsel

You have requested a comparison between HB 41 and the Fisheries Habitat Protection Initiative. In short, these two documents are nearly identical. I will highlight for you below the few differences between the bill and the initiative.

(1) The organization of the two documents is slightly different. HB 41 organizes the bill sections by statute number, starting with AS 16.05.871. The initiative begins with a "purpose" section, which HB 41 does not have, and then secs. 2 and 3 come next, which correspond to secs. 3 and 4 in HB 41.

(2) Both documents add multiple new sections to AS 16.05. The title and text of all of these sections (sec. 4 in the initiative, secs. 1 - 2 in HB 41) is the exact same. However, the statutory section numbers chosen for these added sections is different. For example, the initiative lists the "Fishway required" section as AS 16.05.840, but HB 41 lists that same section as AS 16.05.871. Also, some internal references throughout the two documents are different based on these different numbering schemes.

(3) The following sections appear in the initiative but not in HB 41: sec. 10 amending AS 41.17.090(d); sec. 15 amending AS 41.17.098(e); sec. 17 amending AS 41.17.120; and sec. 26 setting out severability clause for the initiative. The only section that appears in HB 41 but not in the initiative is sec. 19 of HB 41, which amends the duties of the deputy commissioner of natural resources. The thrust of the above differences is that the initiative eliminates the role of the deputy commissioner of natural resources all together. HB 41 only removes the deputy commissioner from any duties relating to habitat. Hence, a section such as sec. 19 of HB 41 allows for the deputy commissioner to retain any duties not related to habitat. Further, the initiative repeals four current statutes not repealed by HB 41 (AS 41.17.905, 41.17.950(23), AS 44.37.055, 44.37.060). All of these statutes involve the deputy commissioner but do not necessarily involve habitat activities, and so these sections were not repealed in HB 41.